



COUNTY OF SAN MATEO
Inter-Departmental Correspondence
County Manager's Office



DATE: September 8, 2011
BOARD MEETING DATE: September 13, 2011
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority

TO: Honorable Board of Supervisors
FROM: David S. Boesch, County Manager
SUBJECT: Board Workshop on "Jail Planning"

RECOMMENDATION:

Provide direction to the County Manager with respect to the issues and questions identified by the Board at its workshop that require additional analysis and dialogue.

BACKGROUND:

Our Shared Vision 2025 recognizes that a *Healthy Community* is one that includes safe neighborhoods. Toward that end, the County invests in prevention and early intervention strategies, measures and tracks results, collaborates across departments and implements innovative best practices. Because of these efforts, San Mateo County is a safe community that has experienced declines in violent crime.

Faced with populations in excess of the rated capacities of its adult correctional facilities, the Sheriff's Office initiated separate needs assessment studies of the women and men incarcerated in our jails. More recently, the County received technical assistance in its effort to better understand the factors contributing to incarceration of inmates that are awaiting trial. These studies provide important background information and are available in their entirety, with excerpts containing findings and recommendations attached hereto.

The County's jails are but one part of the overall criminal justice system. So, while the Sheriff is responsible for the jail, he lacks direct control over the parts of the system external to it; and, as a result, the population of the jail, which is directly influenced by the number of admissions and the average length of stay, is greatly affected by the decisions of the other criminal justice agencies. For years, our criminal justice partners have met to discuss the current state and the factors contributing to and ways of mitigating or addressing the crowding of inmates in existing facilities.

Your Board is being asked by the Sheriff's Office to support the construction of a replacement women's correctional facility as well as additional bed capacity for men. This workshop comes at a critical point in the decision-making process. For the first time, this Board will discuss the direction that the Sheriff is recommending. A successful outcome will be strong agreement about how best to proceed.

DISCUSSION:

The September 13th Workshop presents your Board with an opportunity to surface critical questions and discuss a new jail in the context of improving overall public safety. The discussion will, at a minimum, enable the Board to fully appreciate the scope of the new jail proposed and the significant cost implications to the County budget both near-term and into the future.

It will be important to discuss key questions, issues of concern and areas of agreement, and to clearly identify outstanding questions and other considerations. A list of representative questions is provided as an attachment and may serve as a helpful framework. Another way to start is at a high-level, with an emphasis on the policies, goals and objectives to be achieved within the criminal justice system and the broader community.

It is reasonable to assume that the Sheriff will want to focus in on a relatively narrow set of options, while the Board may well have wider interests. The Board could distinguish between the needs assessment study performed initially on the women who are incarcerated, which was done in parallel to a forum held in February 2007. There is little disagreement from all the research that the needs of women are, in fact, very different.

The Sheriff's proposal is to build a combined men's and women's maximum security facility. His alternatives include a "full build" containing 680-744 secure beds plus 88 transitional beds (768-832 total), and a "phased/partial build" that contains 488-552 secure beds and 88 transitional beds (576-640 total).

The Board may wish to explore additional alternatives. For example, typical environmental analyses include a "do nothing" option. This forces one to think about what could be done differently utilizing existing facilities and resources. If there is consensus to address the deficiencies existent with the Maple Street facilities, another starting point might be to consider an option that would replace the existing buildings and transfer staff; thereby only incurring new capital costs, but little if any additional operating expense increase.

Similarly, if we accept that there are incremental costs associated with currently running the Maguire Jail over its rated capacity, a further alternative for discussion could include building additional beds (a capital cost) and transferring existing staff. To the extent that new or expanded programming is desirable, we should be able to cost-out those that have proven evidence-based results.

In addition to investigating the viable alternatives to deal with our jail population, the County faces the imminent but still unknown impacts of Realignment. What we do know is that the State correctional reforms require that we reduce recidivism by implementing more cost-effective programs at the local level. Exchanging prison beds for jail beds will not be a successful strategy.

FISCAL IMPACT:

The Sheriff has estimated that the cost to build a new correctional facility of the size he proposes is \$145-165 million. To operate, he estimates the additional annual cost to the County is \$20-30+ million. Neither the capital cost nor the operating expense has been budgeted, and would be in addition to the \$50 million ongoing structural deficit. As a result, any decision about a replacement jail or expanded capacity will have significant and long-term implications to all County operations.

- Attachments:
- Representative Questions for Board Discussion
 - San Mateo County Women's Criminal Justice Summit summary
 - Maple Street Facilities Needs Assessment summary
 - Male Offender Needs Assessment Report summary
 - Pretrial Justice Institute Assessment

Representative Questions for Board Discussion

Will building a combined men's and women's jail result in safer neighborhoods compared to alternatives?

What are the additional costs associated with operating the Maguire and Maple Street facilities over their rated capacities?

How much do we currently spend on in-custody programs and alternatives to incarceration?

What are we prepared to do less of if we are going to balance the County budget?

Since the Women's Summit and the needs assessments were completed, what has been done and what are the results?

How are we preparing for Realignment's impacts, given that a new or expanded County correctional facility is at least two years away?

What are other similarly situated jurisdictions doing?

Is a maximum security facility what we need given our jail population and demographics?

What are our other criminal justice partner agencies and community-based nonprofits willing to do to help manage our jail population?

How does building additional jail capacity compete with or complement our other County priorities?

Is AB900 funding likely and advantageous?

What other questions need answers before we decide how best to proceed?



SAN MATEO COUNTY COUNTY MANAGER'S OFFICE

San Mateo County Criminal Justice Summit

San Mateo County Board of Supervisors hosted a Women's Criminal Justice Summit on February 22, 2007. The event was co-hosted by the San Mateo County Superior Court, District Attorney, Sheriff, Probation, Health Departments, Human Services Agency and the San Mateo County Bar Association, Commission on the Status of Women. It drew 275 participants to hear from experts in the field including Joan Petersilia, Professor of Criminology, Law and Society in the School of Social Ecology at the University of California, Irvine; Barbara Bloom, Associate Professor of Criminology and Criminal Justice at Sonoma State University; and panel presentation of women offenders. The San Mateo County Women's Criminal Justice Summit concluded with facilitated small group discussions. The small group work identified five priority strategies:

- ✓ Support funding for community-based reentry and transitional services including health care, housing, job training, substance abuse and mental health treatment;
- ✓ Enhance training to integrate gender-responsive strategies throughout the correctional system;
- ✓ Expand alternative sentencing options for women that enables them to have closer contact with their children and supportive family and community systems;
- ✓ Coordinate policy, programs and services that support the incarcerated women and their children;
- ✓ Establish an inclusive San Mateo County community stakeholder work group charged with developing a strategic action plan; oversee its implementation; and regularly report on the outcomes achieved through the reforms for women in the County's criminal justice system.

California Department of Corrections and Rehabilitation

The above five strategies are repeated and highlighted in the recent (June 2007) California Department of Corrections and Rehabilitation Expert Panel on Adult Offender and Recidivism Reduction Programming, a report released to the California Legislature entitled, *A Roadmap for Effective Offender Programming in California*. That expert panel recommends State Corrections "develop gender and age responsivity," recognizing evidence drawn from a variety of disciplines and effective practice suggests that addressing the realities of women's lives through gender-responsive policy and programs is fundamental to improved outcomes at all criminal justice system levels.

Numerous legislative efforts also aim to advance gender-responsive corrections reforms:

Senate Bill 265 requires the Department of Corrections provide gender-responsive programming and placement for juvenile female wards;

Assembly Bill 76 requires CDCR to create a Female Offender Reform Master Plan and report that plan to the Legislature by March 1, 2008;

Assembly Bill 77 would require Secretary of Department of Corrections and Rehabilitation to develop and implement a Female Offender Reform Master Plan;

Assembly Bill 478 sets minimum standards for pregnant female offenders.

Additionally, in 2005, CDCR established a Gender Responsive Strategies Commission to address the significant growth of the female inmate population, to lower recidivism, and to address the differences in male and female incarceration, management and rehabilitation; followed in 2006, with an RFP to fund smaller community-based centers for women offenders.



I. Introduction

The purpose of this Needs Assessment was to document for the San Mateo County Board of Supervisors the factors driving the increase in women's jail population, to identify the rehabilitative needs of women offenders and to project the future capacity and program needs for the Maple Street Correctional Facilities.

The women's jail is rated at 84 but there has been as high as 173 women housed, including women being housed in a separate pod at the Maguire facility. This severe crowding has prompted officials, the Jail Crowding Task Force and citizens to examine the factors driving the increase in the incarceration of women and to evaluate whether other options could be explored to reduce this increase.

The project team accomplished this objective through a systemic review of pretrial, jail, probation and community based services for women offenders in San Mateo County. Current and historical trend data, criminal justice policies, practices and programs, and needs of women housed in the San Mateo County Jail were examined. In addition, the philosophies and opinions of criminal justice officials, service providers and women inmates themselves were surveyed and nationally accepted best practices were consulted. These sources plus our experience in developing and evaluating female offender programs in other jurisdictions shaped the recommendations found within this report. Limited historical and program evaluative data prevented the project team from accomplishing a comprehensive analysis of existing programs for women.

A key component of the Maple Street Correctional Facility Plan is the development of a new Women's Justice Center that addresses not only the reentry needs of women inmates but also promotes the expanded use of and development of new alternatives to jail for non-violent women offenders. This needs assessment demonstrates that the County could mitigate the number of future maximum security beds for women by investing in expanded pretrial and sentencing sanctions and in the creation of a new minimum security treatment facility whereby women could learn job skills, parenting skills, cognitive behavioral skills and receive treatment for their addictions, and psychiatric disorders, including posttraumatic stress disorders. This recommendation is based on the findings from an analysis of the risk and needs of women confined in the San Mateo County Jail and on national evidence-based practices. This study found:

- Majority of women inmates are confined in San Mateo County Jail for non-violent drug possession and property offenses, only 12 percent are housed for violent/weapons charges. In fact, there are a higher percentage of women confined in San Mateo County on drug possession and theft/property offenses than in the nation's jails.¹
- 80 percent of all women (60 out of 75 women confined) reported that they had moderate to severe alcohol or drug problems.
- Nearly 90 percent of the women reported moderate and severe problems with alcohol and illegal drugs.

¹ U.S. Department of Justice, Bureau of Justice Statistics, *Profile of Jail Inmates. 2002.*



- Methamphetamines were the most commonly listed drug of choice.
- Very few inmates indicated that they were currently receiving substance abuse treatment and an average of 47 percent reported never having received substance abuse treatment.

These findings indicate that there are significant substance abuse and behavioral health care needs among the women in jail. The high incidence of substance use, particularly methamphetamine use, suggests the need for a long-term treatment continuum including residential and intensive outpatient treatment.

These and other characteristics of the women confined contributed to the project team's conclusion that there will be a potential pool of women offenders in the future who could be considered for expanded pretrial supervision and sentencing sanctions in lieu of confinement. National studies demonstrate that many forms of community based treatment are effective.² However, supportive housing, child care services, job skills and treatment services will be needed to reduce their future involvement in the criminal justice system.

An innovative Women's Justice Center (WJC) is proposed to co-locate a variety of facility classifications (maximum, medium and minimum) and supportive services to women in custody. The San Mateo County Sheriff's Office will be responsible for all women in custody. However, as has been the tradition in the past, services to women will be provided in collaboration with the Probation Department, Correctional Health Services and with other public and privately operated community based organizations.

Another innovative feature of the proposed Women's Justice Center is the creation of designated space on campus for a mother and child visitation program, including day and overnight visits to nurture the bonds between mother and child. A Mother and Child Day Treatment Program is recommended for women released from custody to support them and their children during the first six months following release from jail. While this component may be collocated on site with the other components of the WJC, it will likely be coordinated through the San Mateo County Probation, Adult Division, the Department of Health and Human Services, Correctional Health Services, Shelter Network and with other organizations.

These components are recommended because it was determined that more than one-half of the pretrial women and one-third of the sentenced women housed in the San Mateo County Jail are responsible for young children. Numerous studies on female offenders and their children document that the separation of mothers from their children contributes to:

- Five to six times higher delinquency rates among their children.³

² Washington State Institute for Public Policy. Evidence-Based Adult Corrections Programs: What Works and What Does Not. January 2006.

³ Widom, Cathy S. & Michael G. Maxfield, An Update on the "Cycle of Violence," Research in Brief, National Institute of Justice, February 2001. These researchers found that children who have a history of being abused or neglected committed nearly twice as many offenses as juveniles not abused or neglected and abused and neglected juveniles were arrested more frequently than companion cases.



- Inability for children who are separated from their mothers to form trusting relationships and attachments to society's standards.
- More children in foster care.
- Additional welfare costs to society.
- Higher rates of recidivism for women offenders.⁴

II. Summary of Key Findings

Based on an analysis of trends, the inventory of programs, and a review of philosophies, policies, and practices in San Mateo County, the following factors are contributing to the increase in women in jail.

Demographics

- California Department of Finance predicts that San Mateo County's population is projected to increase at an annual rate of 0.5 percent by 2025.

Arrests

- Female arrests during 2002-2003 (latest data available) grew faster than male arrests (15.1 percent for females vs. 4.8 percent for males).
- Misdemeanor arrests increased faster than felony arrests (8.4 percent vs. 3.1 percent).
- Increased arrests are correlated with higher jail admissions.

Jail Populations

- Female jail admissions increased 1.9 percent on an annual basis compared to a decrease in male jail admissions of 0.5 percent during FY98-06.
- Faster growth in female average daily jail population (3.4 percent annual increase) during 1997-2006 than female jail admissions (1.9 percent) has resulted in severe crowding in the Women's Correctional Center. ADP increased nearly 30 percent between 1997 and 2006.
- Between 2004 and 2006, female inmate's overall average length of stay in jail increased 6.7 percent which contributes to the increase in average daily population.
- Female housing units operate as high as 217 percent of their Corrections Standards Authority rated capacity of 84 beds. In November 2006, ADP of all women confined rose to 173 women. Operating above the facility's rated capacity has resulted in the following management problems:
 - Housing units contain twice the number of persons than they were designed for thus jeopardizing the health and safety of the women confined and the staff who are charged with offender supervision.

⁴ Covington, Stephanie and Bloom, Barbara. 2002. *Gender-Responsive Strategies: Research, Practice and Guiding Principles for Women Offenders*. National Institute of Corrections. U.S. Department of Justice.



- No opportunities for the mother and their children to visit with one another thus potentially increasing juvenile delinquency rates among these children.
- Inadequate space for outdoor exercises and activities to properly accommodate the entire population therefore affecting the health of women and adding to the tension within the facility.
- Some counseling is available (mental health, religious, domestic violence, A.A.; AIDS Prevention and HIV/Alcohol counseling) but it is limited because there is no designated space thus reducing the opportunities for rehabilitation.
- Insufficient space for education and treatment programs denies women the opportunity to learn needed skills for their successful reentry.
- More than one-half (50.4 percent) of the women confined in San Mateo County's Jail are sentenced compared to 37.3 percent in the jails across California as of FY06. This pattern varies from 7 jails located in the Bay Area underscoring the philosophy and gaps in services that currently exist for female offenders in San Mateo County.

Pretrial Release

- Decline in the number of female OR releases (12.2 percent) and SOR supervised releases (8.3 percent) during FY98-06 contributed to an increase in average daily population (ADP).
- More than one-half (53.1 percent) of the recommendations for release for females in FY06 were denied. In February 2007, of the 134 women presented to the Court for pretrial release, only 23 (17.2 percent) were recommended for release. Of the 23 recommended for release, 10 or 43.5 percent were released while 47.8 percent were denied. The high rate of denials for pretrial release suggests that there is not general acceptance with the release criteria.
- These patterns reflect a cautious philosophy regarding the use of pretrial release and supervision and they represent missed opportunities to free up jail beds, reduce average length of stay (ALOS), to maintain bonds between mother and child, to increase appearance rates and to enhance public safety.
- In November 2006, there were only 42 pretrial females given the opportunity for diversion and only 10 on Proposition 36, Deferred Entry of Judgment and Drug Court.
- Fewer pretrial women were involved in pretrial supervision than men (12 percent vs. 17 percent) in November 2006 suggesting that women are not given the same equal opportunity for these options. The inmate profile conducted in conjunction with this needs assessment document that most women are non-violent.

Probation and Intermediate Sanctions

- The admissions to Bridges declined by 50 percent between 2002 and 2005. Of the total probationers in Bridges, 46.2 percent are women, representing 23 percent of all women on probation
- No minimum security facility exists for women inmates as there is for male inmates so Work Furlough for women has been limited because all women are confined in maximum security housing.
- Very few of the women inmates surveyed in the research study were involved in PC1000, Proposition 36, Deferred Entry of Judgment, Bridges, and Drug Court, even though nearly



90 percent of these women exhibited moderate to severe substance abuse problems. Recent data provided by the Probation Department shows that for 2007, the percent of females in these programs are representative of the number of females on probation.

- Limited use of existing alternatives to jail, especially for female offenders.
- Limited availability of a range of intermediate sanctions for female probation violators.

Community-Based Services

- Limited availability of supportive housing options for female offenders.
- Limited availability of no-cost intensive outpatient and residential substance abuse treatment options for female offenders.
- Limited availability of no-cost intensive outpatient and residential treatment options for women offenders who have multiple diagnoses.
- Declining treatment funds to support public and private treatment providers has reduced the availability of treatment of special need offenders.

Criminal Justice Practices

- Lack of consensus among criminal justice officials on the most appropriate offenders to be targeted for pretrial supervision and for community-based sanctions.
- Philosophy of the use of jail for shelter for female offenders.

Summary of Gaps in Gender-Specific Programming for Women Offenders

- Space limitations prevent education, vocational, substance abuse treatment and visiting programs for women
- No dedicated space for Work Furlough, Educational Furlough, Sheriff's Work Program
- No Minimum Security Treatment Facility for Women
- Limited number of intermediate sanctions and services tailored to women on probation to reduce violations
- Limited number of community treatment providers that accept women with children
- Wait time for locating a provider is as long as 6 months
- Limited number of supportive housing availability for women and their children

An important gap exists in the lack of historical and evaluative information on existing programs and the lack of an integrated information system that allows officials to track individual cases through the criminal justice system and management information that officials can use for future management and planning decisions.



Key Systemic Recommendations

Based on the findings of this analysis, the project team recommends that a graduated continuum of supervision options, facilities and therapeutic services be developed and funded by the San Mateo County Board of Supervisors. The following continuum demonstrates a reentry program that begins while a woman is in custody and continues six months after their release from jail.

San Mateo County Sheriff's Office

Women's Correctional Center

- 16 beds for Maximum Security Housing (based on 5% nationally accepted standard)
- 72 beds for Drug Treatment Unit
- 70 beds for General Population Medium Secure Housing
- 158 beds for a Minimum Security Treatment Facility
- 316 beds (excluding the special need cells shown below)

- Medical and Mental Health Housing
 - 1 Sobering Cell for 849.b2 and 647.F (4-12 hour medical holding with toilet, latex and telephone)
 - 2 Medical/Mental Health Isolation Cells with Anteroom, Shared Shower (Negative/Positive Air Pressure and latex)
 - 8 Double Room Sick Rooms (16 women)19 special need beds
Note: These 19 cells are reserved for inmates with short-term medical and mental health treatment needs and thus are above the 316 regular beds)

- A new 6-9 month Minimum Security Treatment Facility is recommended on the same grounds as the Women's Correctional Center to serve as a "step-down" from maximum and medium security confinement. This facility will allow the Sheriff's Office to expand its opportunities for Women's Work Furlough, Women's Education Furlough, Community Work and to provide designated capacity for job training, job readiness preparation, drug and mental health treatment. Women will be allowed to work as a trustee in the Women's Justice Center and/or in community jobs while receiving treatment.
- Mother and Child Visitation Program are recommended for both day and overnight visitation.

Probation Department

- 48 slots for Outpatient Day Treatment Center for Women and Children are recommended for women released from custody to probation.



Additionally, to implement other best practices for women offenders throughout the criminal justice system in San Mateo County, the project team recommends the following strategies operated by the San Mateo County Probation Department, Sheriff's Office, Superior Court, Correctional Health Services, Department of Health and Human Services and community based organizations:

- San Mateo County Sheriff's Office: Develop and obtain funding for a structured visiting program for women inmates and their children that strengthen the bond between mother and child and that provides parenting skills training to the mother and to her children's caregiver.
- San Mateo County Sheriff's Office and Correctional Health Services: Include a balance of licensed clinicians and paraprofessionals who are successful graduates from CHOICES to staff the drug treatment component in the Jail. Therapeutic standards should be developed and clinical supervision should be provided to paraprofessionals working in the drug treatment program to ensure that a standard of care is provided that will enhance women's growth. These components are present in evidence-based programs.⁵
- San Mateo County Probation Department: Continue to incorporate research-based and validated gender-sensitive and criminogenic assessment tools that assess risk, needs and readiness to change. The Level of Service Inventory is a nationally accepted assessment instrument that should be used as a primary assessment of risk, needs and readiness to change. Secondary treatment assessments should also be used to determine treatment needs and goals prior to entering treatment and to measure progress throughout the course of treatment. There are advantages for using objective assessment tools. These tools have been validated on women offenders in numerous national studies and can provide helpful guidance to the Court and to Probation Officers in determining the most appropriate target population that will be successful on pretrial supervision and in community-based sanctions.
- San Mateo County Superior Court: Consider targeting misdemeanants, technical probation violators (rule violators) and low-level drug possession and property offenders for expanded pretrial and community based supervision programs in lieu of confinement. Since these findings suggest that the majority of the women in the criminal justice system do not pose a risk to public safety, the project team recommends that current community based options should be expanded wherever feasible and additional options should be developed and funded so that confinement is used for those who are the most serious and violent. Additionally, a review of the length of time from arrest to sentencing should be conducted to determine which procedures could be expedited thus resulting in reduced length of stay for pretrial detainees.
- San Mateo County Superior Court, Probation Department: Expand the number of women participating in the following options:
 - Deferred Entry of Judgment
 - Proposition 36
 - PC1000

⁵ Koutsenok, Igor, Caetano, Izabel P.V., Ellet, Julie. *Professionalizing the Substance Abuse Field: An Invitation for Discussion*. January/February 2006. in Offender Substance Abuse Report. Vol VI. No.1.



- Pretrial Supervision
 - Drug Court
 - Bridges
-
- San Mateo County Probation Department and Sheriff's Office: Expand the number of women participating in:
 - Drug and Alcohol counseling programs
 - Trauma counseling programs
 - Mental health counseling programs
 - Work Furlough/Job Training programs
 - San Mateo County Probation Department, Adult Division: Expand the Reentry Program to provide a formal 6 months aftercare program for women released from custody to the Probation Department that provides them continued support in locating housing, education, job training, child care and other reentry needs upon release from custody.
 - San Mateo County Probation Department, Adult Division: Establish a Women's Wraparound/Outpatient Model for multiply-diagnosed women based on the nationally accepted *Assertive Community Team* model and on the assessed needs of the women in San Mateo County.
 - San Mateo County Probation Department Reentry Program: Enter into contractual arrangements with community shelter providers to provide supportive housing to homeless women upon release from custody to expand the number of family and single occupancy apartments for women leaving jail. Wherever feasible, relocate women who are at risk of relapse to new neighborhoods to provide them and their children a fresh start.
 - San Mateo County Probation Department and Sheriff's Office: Assess the women's eligibility for Medi-Cal before release from jail and link eligible women up with economic supports to assist them toward greater self sufficiency.
 - San Mateo County Probation Department and Sheriff's Office: Work with community-based organizations, including faith-based agencies to create a pool of women mentors to provide support to women leaving jail.
 - San Mateo County Probation Department and Sheriff's Office: Continue to fully maximize the Probation Reentry Specialist assigned to the Jail to identify women eligible for sentence modifications, to assess and address their reentry needs before release and link women up with necessary support services.



I. Introduction

Overcrowding of the San Mateo County Jail continues unabated. The Maguire Correctional Facility exceeds its rated capacity by 52 percent as set by the Corrections Standards Authority and its safe operating capacity by 69 percent based on nationally accepted best practices.¹ The extent of crowding is exacerbated because many of the housing units within the jail house more persons than they were designed to hold and the jail has had to convert multipurpose rooms and dayrooms into housing. Congregating persons into small spaces contribute to the spread of infection such as tuberculosis, hepatitis B, and methicillin-resistant, staph aureus, both within the facility and into the community upon release.² Operating over a facility's safe operating capacity is not nationally accepted practices as it leads to the spread of infection, incidents, assaults and injuries.

The Sheriff, Board of Supervisors and the Jail Crowding Task Force have escalated the planning of interim measures to deal with the excessive crowding until long-range strategies can be implemented.

This report presents the second part of a comprehensive assessment of jail inmates housed in the San Mateo County Jails. In the spring 2007, the Board of Supervisors reviewed our Needs Assessment Report on the Woman Offender. This report provides the findings and recommendations for dealing with male inmates.

These two reports should provide a roadmap to the Sheriff and other key stakeholders for addressing the housing and rehabilitation needs of men and women in the criminal justice system.

II. Summary of Key Findings For Male Offenders

Demographics

- San Mateo County ranks 14th in the state in size of general population but 40th in the percent change in its population during 2005-2006.³
- Males residing in San Mateo County are expected to increase 10.6 percent between 2006 and 2025.
- The overall increase in the County's population is not dramatic but shows a steady growth in the next 20 years.

¹ Bureau of Justice Statistics. 2005. *Prisoners in 2005*. U.S. Department of Justice. Safe operating capacity is the number of inmates that a facility should house in a facility based on its physical plant constraints, times when cells are not usable due to repairs, staffing availability, number of special need inmates that require detoxification or mental health observation and program space capacity. Nationally, jail administrators calculate their safe operating capacity based these factors or they simply calculate 90%-95% of their design capacity.

² Freudenberg, Nicholas. *Coming Home from Jail: A Review of Health and Social Problems Facing US Jail Populations and of Opportunities for Reentry Intervention*. Jail Reentry Roundtable Initiative. June 2006. The Urban Institute. Washington, DC.

³ California Department of Finance, Demographic Research Unit. January 2006.



Arrests

- Arrests of males are down in San Mateo County 12.2 percent during 1997 and 2005 documenting that arrests are not a major contributing factor toward jail crowding.
- Drug arrests continue to be the highest category of arrests during 1997-2005, consistent with trends throughout the State of California.

Jail Populations

- Jail populations are historically not directly associated with arrests. Serious crime has declined nationally while jail populations continue to increase.⁴
- Male jail admissions declined 2.3 percent during FY98-FY07 compared to a 17.5 percent increase for female admissions.
- Majority of jail admissions are for misdemeanor crimes. However, the jail holds more felony offenders on a daily basis (56.1 percent felony) due to the longer lengths of stay for felony offenders and the shorter length of stay for misdemeanants.
- Consistent with national trends¹², felony admissions for drugs lead the increase in San Mateo County's jail population. There was a significant 13.3 percent increase in admissions for drug crimes during FY05-FY06.
- The total average daily jail population (ADP) increased 16.3 percent between FY02-FY07 with the greatest increase experienced from 2006-2007.
- More than one-half of the inmates (52.7 percent) housed in jail on a daily basis are waiting trial.
- The average length of stay for male inmates is 22.5 days which is consistent with statewide jail data.⁵ This data includes all newly booked inmates, many of whom are released within 72 hours. The jail purchased a new jail tracking system and has reported length of stay data showing that pretrial males stay 127.1 days and pretrial females stay 145.1 days. Sentenced inmates are reported to stay 65.6 days-69.6 days. These findings suggest case processing issues that could be expedited to reduce the average length of stay.

The inmates participating in the successful CHOICES Program stay the longest in the jail at 170.5 days demonstrating that county officials have chosen to use their jail for the rehabilitation of selected populations.

⁴ San Mateo County Sheriff's Office. Cunniff, Mark A. 2002. *Jail Crowding: Understanding Jail Population Dynamics*. National Institute of Corrections. U.S. Department of Justice.

⁵ State Court Processing Statistics Program. Felony Defendants in Large Urban Counties. 2002. Bureau of Justice Statistics. U.S. Department of Justice.



However, the findings of the inmate profile will show the housing of non-violent offenders in the jail also drives jail crowding.

- During 1997-2007, a total of 396 jail beds were closed due to lack of funding.
 - Men's Correctional Center (Honor Camp): Capacity 144
 - Medium Security Facility (LaHonda): Capacity 96
 - North County Facility: Capacity 16
 - Work Furlough Facility: Capacity 140
 - Total: 396
- The Sheriff added a 46-bed Minimum Security Transitional Facility for male offenders during this time. Also, when the Work Furlough Facility was closed, the Sheriff began an Electronic Monitoring Program to help relieve jail crowding and to protect public safety for those non-violent inmates released on day reporting and on community supervision.
- There is no stand-alone Work Furlough Program currently available. The Superior Court and the District Attorney are supportive of this program as it enables men and women to continue to work and provide for their families and to meet their court-ordered financial obligations.

Pretrial Release

- San Mateo County ranks number 1 among 18 jurisdictions in the confinement of pretrial defendants until case disposition, and the county ranks third among the 18 jurisdictions using non-financial release the least.
- Of the 1,080 reports submitted to the in-custody Arraignment Court by the Pretrial Release Unit, 84.6 percent were not recommended for pretrial release. Of the 15 percent that were recommended for release, one-half of these were denied by the Arraignment Court. These high rejection rates suggest that the criteria for pretrial release need to be examined and a new risk and needs assessment instrument be developed to better identify eligible candidates.
- Outcome data for pre-trial defendants released from jails nationwide and in San Mateo County confirm that the majority of defendants appear in court and are not rearrested.
- There is limited variety of options for pretrial supervision in San Mateo County compared to national pretrial supervision programs.

Probation and Intermediate Sanctions

- The majority of persons being supervised on probation are persons convicted of felony crimes and this is consistent with statewide probation data.
- Probation has seen an increase in drug offenders and offenders convicted of Proposition 36 crimes.
- There is limited capacity in the Bridges Day Treatment Program for more inmates.



Jail Alternatives

- The Sheriff uses a Jail Citation program to release non-violent misdemeanor offenders at booking and this program has cited 2,045 misdemeanants during the first nine months of 2007.
- The Sheriff also operates four programs to relieve jail crowding—Sheriff's Work Program (525 report daily for community work), Weekender, Work Furlough, Electronic Monitoring. The Work Program is utilized the greatest while the Work Furlough, Weekender and Electronic Monitoring are underutilized.
- There are nine jail alternatives commonly used in other California jurisdictions that are underutilized in San Mateo County and six options not used at all.

Characteristics of Men Housed in the Jail

Men housed in the San Mateo County Jail have the following characteristics:

- Three-quarters are local residents
- Eight out of ten lived at the same address six months or more suggesting a factor of stability
- Nearly six out of ten are not responsible for children
- The most frequent offense for which they were confined was for personal drug use and possession
- Nearly two-thirds have no pending charges from other jurisdictions
- Thirty-eight percent were probation violators
- Male inmates had an average of 1.1 prior non-violent felony convictions and less than one prior violent felony conviction
- Six out of ten of the men had earned their high school diploma, GED, a Bachelor's Degree or had post-secondary education
- Almost sixty percent were employed at the time of this current jail admission and most reported that they expect to be employed upon release
- More than three-quarters of the men report having suitable housing upon release and do not expect to be homeless
- More than three-quarters of the men report having some form of family support upon release
- More than one-half report using drugs and four out of ten report using them daily or several times a week
- Methamphetamines were the number one drug of choice
- Among those using drugs, 20 percent also reported having emotional problems
- Only 17.2 percent reported being involved in treatment at the time of this arrest and few reported ever receiving treatment

These characteristics describe a highly addictive educated male that is charged/convicted of a non-violent crime, most do not have pending charges and most have little criminal background. The male is employed, expects to have a job upon release, will have a suitable home and will have family support upon release from jail. While these characteristics suggest a male population who is



moderately functioning, their drug and alcohol use has negatively impacted their life. In the absence of a substance abuse assessment, it is difficult to determine what percentage of the male population requires regular outpatient, intensive outpatient or residential substance abuse treatment upon release.

Future Jail Bedspace Needs for Male Inmates

By 2018, if San Mateo County does not fund and implement alternatives to incarceration, the County will need to double the size of its jails for men to 1,543 beds and by 2026, nearly triple its jail for men to 2,032. The project team does not recommend a single solution to resolve the County's jail crowding; but instead recommends providing adequate jail capacity for violent offenders and the expansion of pretrial and sentencing alternatives to incarceration for non-violent offenders.

Long-range Strategies to Reduce Future Beds under the Leadership of the Sheriff's Office and to Reduce Offender Recidivism

The following strategies are under the direct control of the Sheriff's Office.

1. Reduce the sentenced males by 250 and the sentenced women by 45.
2. Divert by 15%-20% of the future non-violent inmates from custody to pre-trial and sentenced alternatives to incarceration.
3. Give the Sentencing Bureau the authority to transfer inmates to lower custody programs after a reassessment with notification to the court.
4. Establish a formalized process to identify inmates on a weekly basis who are eligible for County Parole (PC 3074) and for Early Release of up to eight days (PC 4018.6, PC 4019, PC 4024.1) consistent with Section 11.03 of Department's Classification Policy, and make a request to the Presiding Judge for a 30-day authorization to release sentenced inmates up to a maximum of 5 days when the inmate count exceeds the bed capacity of the jail. Inmates near their normal release date should be given priority for accelerated release.
5. Invest in 2 assessment specialists to work with jail classification to assess inmates for mental illness and substance abuse disorders to identify eligible inmates who could be placed in treatment programs in the community.
6. Expand the use of the Jail Reentry program to reduce the length of stay of eligible inmates by establishing a contract with the Shelter Network's Homeless Shelter and local substance abuse agencies to provide structured reentry housing for inmates upon release.
7. Implement the release of pretrial inmates to Day Reporting or to electronic monitoring and support services that have profiles that indicate they would likely receive a probation sentence at sentencing.
8. Work with Delancey Street, Correctional Health Services and the Superior Court to reduce the length of stay of the in-custody CHOICES program from 170 to 120 days and work with the Reentry staff to ensure that arrangements are made prior to release with substance abuse and mental health service providers in the community to provide continuing services to them upon release.



9. Develop a CHOICES Reentry Facility in the community (without the involvement of Delancey Street) for inmates who graduate from the in-custody CHOICES program and who need transitional housing and treatment prior to discharge. Currently, this is a major gap in the substance abuse continuum as there is currently no suitable facility to accommodate this program.
10. Monitor the use of Release without Charge (PC 849b) for public inebriates to ensure that these individuals are released within 8 hours.
11. Establish a formal warrant-hold clearance program to expedite the processing of warrants and to reduce the persons confined on warrants such as assigning jail staff to expedite warrant resolutions.
12. Restore the Sheriff's Work Furlough Program that emphasizes job readiness/job retention skills, career education, substance abuse education and treatment and cognitive behavioral programming in partnership with the Opportunities Industrial Center West, Delancey Street, Adult Probation, Correctional Health Services and other providers who are qualified to provide education and substance abuse treatment.
13. Prepare an application for a Community Reentry Center from the State Department of Corrections and Rehabilitation to serve parolees, probation violators and work furlough inmates.

To achieve these 10 strategies, funding will be required to implement jail alternatives, for restoring the Work Furlough Program, for expanding the Reentry Program and for contracting with local providers to release non-violent inmates to community treatment service providers where they can receive intensive treatment for their addictive and psychiatric disorders.

Systemic Strategies for Criminal Justice System Stakeholders

Meetings are continuing with the Superior Court, County officials and the Jail Crowding Task Force to discuss planning assumptions that could mitigate the number of jail beds in the future. At this stage in the planning process, the bedspace projections have been modified to factor in the impact of a 15%-20% reduction in "hard bed" capacity through increased pretrial and sentenced community-based programs.

From a policy perspective, there is support for the following:

- Creating Reentry facilities
- Restoring Work Furlough with a reentry focus
- Including work, vocational education and industry program for persons sentenced to jail
- Continuing the "informal" partnership with Delancey Street
- Fully implementing the 8 evidence-based principles nationally accepted and endorsed by the California Department of Corrections and Rehabilitation⁶

⁶ Crime and Justice Institute. 2004. *Implementing Evidence-Based Practice in Community Corrections: The Principles of Effective Intervention*. Washington, D.C. National Institute of Corrections. The 8 principles are: target the highest risk offender; assess offender needs; design responsibility into programming and behavior management plans; deliver treatment programs using cognitive behavior strategies; motivate and shape offender behaviors; involve the family,



- Reduce the 7 criminogenic needs that offenders possess and substitute these with healthy alternative behaviors⁷
- Develop step-down programs
- Explore Day Reporting
- Continue the in-custody CHOICES and develop a structured reentry facility for CHOICES graduates who require continuing structure to reduce their relapse and reoffending
- Expand the Bridges Program to provide inmates an incentive to earn their way out of jail

The following long-range planning assumptions are recommended for consideration by key stakeholders in the criminal justice system: To date, there is no final consensus on these recommendations.

1. 8 percent reduction in overall probation violator admissions from 38% to 30% due to fully implementing evidence-based practices and expanding the Bridges program for probation violators who would otherwise be confined.
2. 10 percent increase in the use of pre-trial release (OR and/or pretrial supervision) by establishing a Day Reporting Treatment Center.
3. 33 percent reduction in the estimated length of stay for probation violators in custody waiting for their probation violator hearings.
4. Establish a formal Mental Health Diversion Program (PC 4011.6) for minor offense defendants whose unlawful behavior is largely driven by their mental illness and whose case is likely to be dismissed or to be placed on informal probation.
5. Work with law enforcement to determine a new jail admissions protocol to reduce the number of misdemeanants booked in the jail and to prohibit persons booked on a bond of less than \$10,000. Increase the use of Field Citations consistent with PC 853.6.
6. Establish a formal community work program in lieu of jail operated by the Probation Department or by a non-profit community based agency.

San Mateo County Justice Center

The Women's Needs Assessment recommended a Women's Justice Center to co-locate a series of facilities and programs on one single site for women. This report recommends building on this concept to provide a similar continuum of services for male inmates.

Specifically, the project team recommends the following components in the Justice Center for male and female inmates:

social service agencies and the broader community; develop a collaborative approach among justice and treatment providers; develop and measure outcomes.

⁷ California Department of Corrections and Rehabilitation: Expert Panel on Adult Offender and Recidivism Reduction Programming, Report to the California State Legislature. June 29, 2007. Criminogenic factors are defined as risk factors such as educational-vocational deficits and achievement skills; anti-social attitudes and beliefs; anti-social and pro-criminal associates and isolation for pro-social others; temperament and impulsiveness (weak self-control) factors; familial-marital-dysfunctional relationship (lack of nurturance-caring and/or monitoring-supervision); alcohol and other drug disorders and deviant sexual preferences and arousal patterns.



- Assessment Center
- 72-Hour Holding Capacity
- Secure Jail (1,003 beds)
- Work Furlough Reentry Facility (541 beds)
- CHOICES Reentry Program
- Day Reporting Center for pretrial and sentenced inmates
- Electronic Monitoring for pretrial and sentenced inmates
- Bridges Day Treatment Reentry Program

The Sheriff's Alternative Sentencing Bureau should have responsibility for the following programs because it is in the Sheriff's best interest to manage his jail population.

- County Parole
- Accelerated Release
- Jail Citation
- Warrants-Hold Clearance Program
- Work Program
- Work Furlough

The following report presents detailed findings and recommendations for consideration by the San Mateo County Sheriff's Office, Superior Court, Board of Supervisors, Jail Crowding Task Force, Adult Probation and community-based treatment providers.



II.12.1 Types of Alternatives to Jail Commonly Used in California

The following table highlights the major alternatives to jail used by jurisdictions in California and their frequency of use in San Mateo County using qualitative data since quantitative data were not available on all of these options.

Table 20
California Jail Release and Community Supervision Options
Frequency of Use in San Mateo County, CA

| Type of Option | Low Use | Moderate Use | High Use | Not Used |
|---|---------|--------------|----------|----------|
| Field Citation | × | | | |
| Release on Own Recognizance | × | | | |
| Supervised Release | × | | | |
| Deferred Entry of Judgment | × | | | |
| Proposition 36 | | | × | |
| Drug Court/PC1000 | × | | | |
| Misdemeanor Jail Citation | | | × | |
| Prosecutor Mentally Ill Diversion | | | | × |
| Community Service Work In Lieu of Jail | | | | × |
| Day Treatment in Lieu of Jail (Bridges) | × | | | |
| Sheriff's Work Program | | | × | |
| Electronic Monitoring | × | | | |
| Work Furlough | × | | | |
| Weekender | × | | | |
| DUI Drug/Alcohol Residential Treatment | | | | × |
| Standard County | | | | |



| Type of Option | Low Use | Moderate Use | High Use | Not Used |
|------------------------------|---------|--------------|----------|----------|
| Parole | | | | x |
| Residential County Parole | | | | x |
| Accelerated Release | | | | x |

Source: Huskey & Associates

This table shows that nine options are used sparingly and six options are not used at all at the moment. In another section of this report, we have included descriptions of the types of jail alternatives being used in Marin County, San Francisco County, Santa Clara County, Contra Costa County, Sonoma County, Solano County, Alameda County, Riverside County, and Orange County.



Assessment of the San Mateo County Pretrial Services Program within the Context of the Local Administration of Bail

**Technical Assistance Provided by the Pretrial Justice Institute
Michael R. Jones
July, 2011**

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Disclaimer

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Assessment of the San Mateo County Pretrial Services Program within the Context of the Local Administration of Bail

Introduction

This report summarizes the primary findings and recommendations from the assessment of the San Mateo County Pretrial Services Program within the context of the local administration of bail. Mary McMillan, Deputy County Manager, acted on behalf of the County's Criminal Justice Work Group to request technical assistance for a pretrial services program assessment. More specifically, the request was to help the jurisdiction's decision-makers better identify areas for improvement, efficiencies, initiatives, change, and/or reforms so that the jurisdiction can evaluate its pretrial justice policies and practices in the context of an evidence-based standard to ensure fairness, access to justice, better outcomes, and efficient use of resources, including the jail.

Decision-makers in many jurisdictions find it useful to organize their collaborative system improvement efforts by viewing the criminal justice system as a process involving multiple key decision points. These decision points are moments when the policies and practices of the different system agencies affect the processing of criminal cases through the system and affect the resources of other agencies. The policies can be written or unwritten and can occur at the agency or staff level. One decision point framework consists of seven points:

1. Arrest Decision
2. Booking Decision
3. Pretrial Release Decision
4. Charging Decision
5. Adjudication Decision
6. Sentencing Decision
7. Modification of Sentence Decision

This technical assistance covers the third decision point, Pretrial Release.

The overall goal of this technical assistance is to provide policymakers with information on opportunities to more closely align current pretrial policies and practices with those that are legal and evidence-based or cost-effective, including suggestions for initial action steps that policymakers can take to begin that alignment. The narrow timeframe in which the assistance was performed and this report was written, along with funding constraints, do not permit an exhaustive, more detailed assessment and report that would describe many programmatic and operational opportunities for improvement. Instead, the focus is on policies and programmatic practices that, if changed, would enable local decision-makers to begin to improve the pretrial release decision of the pretrial phase of the local justice system. Opportunities for improving other portions of the pretrial phase, such as law enforcement's decision to arrest and decision to book a person into jail, although important are beyond the scope of this assistance. For possible additional technical assistance with the pretrial decision point or the other decision points (e.g., charging, sentencing), Deputy County Manager McMillan has already initiated contact with the Bureau of Justice Assistance's National Training and Technical Assistance Center (NTTAC).

Method

San Mateo County's pretrial technical assistance was provided by Dr. Michael R. Jones, Senior Project Associate of the Pretrial Justice Institute. Dr. Jones reviewed several documents, including data already compiled by the Sheriff's Office and other agencies, and received background information from Ms. McMillan. Dr. Jones was on site on May 11 through 13, 2011, during which time he met individually or in small groups with the major stakeholders involved in the pretrial stage (see meeting schedule in Appendix A), observed the pretrial program's risk assessment preparation and two of the court's bond setting hearings, and then met with the Criminal Justice Work Group during their regularly scheduled monthly meeting.

Findings and Recommendations

For this technical assistance, findings and recommendations are grouped into several topics, most of which represent an opportunity for improvement either within the pretrial program itself or in the justice system context in which the program operates. Full citations for cited documents are listed at the end of this report and have been provided in PDF to Ms. McMillan.

Jail's Pretrial Population

Finding

The average daily population of persons in the custody of the San Mateo Sheriff during the past year has been in the upper 1,300s. Of this total, approximately 650 (47%) are sentenced and 700 (53%) are on pretrial status. Of the 650 sentenced inmates, approximately 390 are not incarcerated in a facility and instead are serving their sentence in a community-based program under the Sheriff's Office's Alternative Sentence Bureau (ASB). Thus, on any given day there are approximately 960 total inmates in the County's jail facilities, with 260 (27%) on sentenced status and 700 (73%) on pretrial status. The 73% is somewhat higher than the national average of 61%¹ for jails, as reported by the Bureau of Justice Statistics. The relatively high number (given the County's population of approximately 750,000) and percentage (compared to the national average) of pretrial inmates suggests that the benefits of changing the local system's pretrial practices could outweigh the costs (whether measured by funding or by stakeholders' time) of doing so, and likely while maintaining or enhancing public safety or other aspects of quality of life for County residents.

Recommendation

The Sheriff's Office is encouraged to continue to track regularly these statistics indefinitely to provide the Sheriff and other local decision-makers with information on how the jail is being

¹ The Bureau of Justice Statistics reports that at mid-year 2010, 61% of local jail inmates were on unconvicted status (see "Jail Inmates at Midyear 2010 - Statistical Tables" by the U.S. Department of Justice, April, 2011). This statistic counts the number of inmates held in custody and does not include additional persons in community-based programs operated by a jail facility.

used. Both the number and categories (e.g., pretrial and sentenced, misdemeanor and felony, male and female) of inmates should continue to be tracked. Moreover, the current number of inmates in each category can serve as a baseline to which future statistics can be compared after any initiatives to change (reduce) the jail population have been implemented.

Sheriff's Office's Efforts

Finding

In an effort to help regulate the jail population, the Sheriff's Office uses several procedures to release as many newly admitted persons charged with a misdemeanor as possible. For example, jail staff uses a Promise to Appear (PTA) Program, in which staff has the authority, delegated by the Superior Court, to release on citation newly admitted inmates who meet certain criteria. Qualified inmates are those who appear to be at low risk both for failure to appear and to public safety. In December of 2010, approximately 47% of all pretrial misdemeanor arrestees were released on citation within 24 hours of book-in. Jail staff reported that one of the release criteria, as determined by the Superior Court, is that a bond amount on a warrant must be \$7,500 or less. This amount was previously set at \$5,000 prior to 2002.

Recommendation

The jail's use of delegated pretrial release authority likely helps reduce the number of pretrial inmates in the jail. Because the County's criminal justice system's pretrial practices currently rely on money to a large extent (this will be discussed in more detail later), the use of delegated release authority appears to be an adaptation to release lower risk pretrial inmates who might not otherwise be released as quickly or at all until the disposition of their case. Thus, if money-based pretrial practices continue into the future, it is recommended that the delegated release procedures continue to be implemented as a way to help manage the size of the jail's pretrial population. However, if in the future the jurisdiction becomes less dependent on money-based pretrial practices that largely base a defendant's risk to public safety or failure to appear on the defendant's top charge (as is done with money bond schedules), the utility of delegated release procedures could diminish significantly.

Pretrial Services Program

Finding

San Mateo County has a pretrial services program that is jointly administered by the Sheriff's Office and the Probation Department. The Sheriff's Office performs most of the pretrial risk assessment tasks, and the Probation Department completes the risk assessments and provides pretrial supervision services. The Program has been in existence for over 10 years, and is funded by the County Government. The Program's policies and procedures have adapted to meet the needs of the Superior Court, so its strengths and weaknesses can be best understood in the context of the local Court's administration of bail/pretrial practices. The relationship between the Program and Court is bi-directional, with the Court also adapting to the Program's practices.

Thus, any change (improvement) that the Program makes will affect the Court, and any change (improvement) that the Court makes will affect the Program.

Recommendation

It is recommended that the program continue to exist and consider the programmatic changes recommended in later sections of this report. If the program as it is currently configured were to cease to exist while the court continued to administer bail as it does today, then it is likely that the jail's pretrial population would increase, possibly substantially. Additionally, if the court were to make several changes to its pretrial practices, then the pretrial program will need to adapt to remain useful and effective.

It is recommended that any changes (improvements) made in the foreseeable future include planning and coordination between the Court, Pretrial Program, and other stakeholders, such as the Jail, District Attorney's Office, and defense counsel. Opportunities for improvement will be discussed in subsequent sections.

Pretrial Risk Assessment

Finding

The pretrial program, like most nationally, performs pretrial risk assessment and reports information to the court to assist the court in making a more informed pretrial/bond decision.

The ideal target population for pretrial assessment is 100% of pretrial inmates for whom a judge has to set a bond. In San Mateo County, the program performs ideally in this regard because it assesses every newly admitted inmate on pretrial status.

The ideal timing of the interview portion of the assessment occurs prior to the inmate's first court appearance. Again, the program does very well, because all pretrial inmates are interviewed by jail staff, and information necessary for the pretrial assessment is collected at that time. Indeed, San Mateo County has a relatively unique interview process because the jail staff interviews the inmate for several purposes at once – pretrial risk and jail classification. Although unusual in most jurisdictions, this practice appears to create an efficiency that achieves the desired result (information collection and input into the computer system) while expending less staff resource. Moreover, jail staff attempts to verify with a third party certain information (e.g., residence, employment) provided by the defendant. The verification process is currently viewed as a desired practice by the pretrial field nationwide.

The pretrial program uses a pretrial risk assessment that contains most of the elements commonly used to inform courts about a defendant's risk of pretrial misconduct (i.e., failure to appear [FTA] and new crime). Some of the elements used, among others, are criminal history, FTA history, residence and employment status, drug use, mental health status, and other involvement with the criminal justice system. However, the elements (and therefore the tool) have not yet been statistically validated. Validation is important because it results in a risk assessment instrument that helps judges, attorneys, and pretrial professionals focus on the information that

statistically predicts each individual defendant's pretrial misconduct, reducing the need for these stakeholders to rely solely on guesswork developed largely from experience.

The program submits the risk assessment report to the bond setting judge, District Attorney's staff, and defense counsel immediately prior to the bond setting hearing. The judges and attorneys stated that they have sufficient time to review it and that the content of the report is very useful to them when making their bond arguments (by the attorneys) or setting bond (by the judges). Indeed, one stakeholder reported that the Court and attorneys would be "ill-equipped" to make bond decisions without the pretrial risk assessment.

Pretrial Services' recommendations come in one of three forms: (1) Own Recognizance (OR); (2) Supervised Own recognizance (SOR); or (3) No Recommendation for OR (which serves, inadvertently, to encourage attorneys to argue monetary bond amounts and the Court to set a money bail release option). When making the recommendation for the type of release, the Pretrial Program does not consider the defendant's current charges or specifics of the allegations. Finally, as is done in some jurisdictions, the Pretrial Program does not update the defendant's risk assessment and report this information to the Court if the defendant remains incarcerated after a brief period of time (e.g., few days).

Recommendation

It is recommended that the Pretrial Program continue to perform those practices that further cost-effective bond setting and pretrial practices. These practices specifically include assessing the pretrial risk of all defendants for whom the court will be setting bond, interviewing defendants as part of this assessment, including information generally known to predict pretrial misconduct, attempting to verify defendant-provided information, and providing the court and attorneys with information useful to their decision-making.

Nonetheless, several opportunities for improvement exist. First, the local justice system should work to develop a validated pretrial risk assessment instrument. Neighboring Santa Clara County is in the process of developing such a tool, so a rare opportunity exists to collaborate with that jurisdiction. Such collaboration would make San Mateo County's efforts more efficient (because a lot of data collection methods and issues have already been tested and resolved), and provide an opportunity for better case-based information sharing between the courts and pretrial programs in both counties.

Second, it is recommended that the Pretrial Program eliminate the practice of recommending the type of release (i.e., OR, SOR, or no recommendation for OR) because these recommendations are subjective and not based on research. That is, there currently is no evidence (in San Mateo County and nationally) that the risk posed by a defendant who has any given combination of risk factors (e.g., number and type of convictions, number of previous FTAs, current residence or employment) can be best reduced or managed through certain types of release (OR vs. SOR vs. money bond). That is, the conditions of bond, rather than the type of bond/release, have a greater role in risk reduction. In addition, whether a defendant is released or detained pending adjudication, and the type of release, is a judicial decision. The Program can be useful to the Court by (a) informing the Court whether each individual defendant for whom the judge is

setting bond is statutorily eligible for an OR bond, (b) whether the Program believes, based on the risk assessment, pretrial supervision would help mitigate any given defendant's specific risk factors, and (c) which specific conditions of bond (including pretrial supervision) would, in the Program's opinion, most likely mitigate any given defendant's specific risk.

Third, at this time, although the Pretrial Program could update the risk assessment (if necessary) of defendant who remains in custody because he/she has not posted the monetary amount of the bond within a few days, this process would likely not be cost-beneficial until the Court substantially reduces its reliance on a money-based administration of bail. Thus, the utility of this practice can better be determined after other changes are made.

Bond Setting

Finding

Bonds are typically set using one of three methods. For the first method, jail staff informs defendants who are booked into the jail the monetary amount of their bond according to a schedule that is revised yearly by the Superior Court and for which the defendant's top charge is assigned a monetary amount. Defendants who by themselves or through family or friends have sufficient funds to pay the full amount of the bond or purchase the services of a bail bondsman can be released. This release occurs regardless of the known degree of the defendant's risk for failure to appear or public safety (because research has shown that the defendant's current charge is only one of approximately a dozen factors that determines risk, and alone is an inadequate gauge of pretrial risk). In addition, these defendants typically do not have any other bond condition to which they must comply and are rarely supervised by the Pretrial Services Program. In this method, a judicial officer does not consider each defendant's risk and which conditions of bond would most likely minimize that specific risk.

For the second method, defendants who qualify for the Promise to Appear Program are released under delegated release authority from the Court (discussed in a previous section). This type of release involves a limited consideration of the defendant's risk (e.g., current charges are not felonies), but it is only available to defendants whose bond is \$7,500 or less. In this method, a judicial officer does not consider each defendant's risk and which conditions of bond would most likely minimize that specific risk.

For the third method, defendants who are not released on delegated authority, who are held because of the seriousness of their current charges (e.g., homicide), or who cannot afford to pay the scheduled amount are held in jail until they see a judge on the next working day. At that time, the judge does consider the information provided in the pretrial risk assessment and by the attorneys, and then sets a bond in consideration of each defendant's specific risk.

Recommendation

It is strongly recommended that local stakeholders consider transitioning from a primarily money-based to an individual- and risk-based administration of bail for the purposes of enhancing public safety, promoting better defendant court appearance, and better adhering to the

legal principles of the presumption of innocence and due process. These issues are interrelated and complex, so they are discussed briefly in a later section and in more detail in other documents which the reader of this report is strongly encouraged to read to gain knowledge of the legal and scientific basis of many of the recommendations in this report (see References section).

Pretrial Supervision

Finding

Approximately 450 defendants are under pretrial supervision on any given day. The pretrial function is housed and staffed separately from the probation function within the agency. The policies and practices of the Probation Department's pretrial supervision appear to be functioning well. During the two intakes that were observed, staff behaved professionally by appropriately balancing support and encouragement with firmness and limit setting, and they communicated well the Court's expectations to defendants. Other system stakeholders voiced their support of the program and its responsiveness to incidents in which defendants violate their bond conditions. Defendants who are released by the Court on SOR receive pretrial supervision. The Court orders these defendants to supervision because they believe that they pose too much risk to warrant unsupervised release. Defendants who are released on money bond only receive pretrial supervision in rare circumstances if the Court orders the defendant to supervision at some time after the initial bond setting.

Recommendation

It is recommended that the Pretrial Program continue its well-functioning practices and seek additional opportunities to better align its practices with those recommended by the National Association of Pretrial Services Agencies (NAPSA), the national organization that promotes standardized and best practices among pretrial agencies. NAPSA publishes various resources, including guidelines for practice, has staff certification, and holds a national training conference each fall. For example, the NAPSA Standards state that the pretrial services program should consider the "nature and circumstances of the offense" when assessing the defendant's risk and making bond recommendations to the court. Because the Pretrial Services Program does not currently include this information in its risk assessment, but the attorneys and judges do consider this, a large discrepancy between the Program's recommendations and the attorneys' recommendations and the Court's bond decisions would be expected.

Information System

Finding

Even though the Pretrial Program's functions are separately administered by two independent agencies (Sheriff's Office and Probation Department), the agencies use one information system for both the risk assessment and supervision functions. Staff reports that the system is in need of several updates to better support current work processes, particularly reporting for purposes of tracking process measures and measuring outcomes.

Recommendation

It is recommended that any future changes to the information system occur with consideration of and consultation by both agencies' staff that uses the system. If this consultation does not occur, then existing efficiencies could be lost.

Performance Measurement and Reporting

Finding

The Pretrial Program tracks some data (e.g., number of defendants who were recommended and granted OR) and shares reports with system stakeholders. However, the local system lacks important outcome data on its pretrial practices. At a minimum, all stakeholders should know, by type of release (Money bond, PTA, OR, SOR), the:

- Court appearance rate (measures the degree to which defendants attend court hearings for which the court expects their attendance);
- Law abiding rate (measures the degree to which defendants under pretrial supervision do not commit new crime);
- Technical compliance rate [Only relevant for defendants under pretrial supervision] (measures the degree to which defendants under pretrial supervision do not violate other conditions of their bail bond [e.g., use alcohol or drugs]).

Recommendation

It is recommended that justice system stakeholders decide upon and regularly request performance measures so they can gauge the effectiveness and efficiency of their decision-making, policies, practices, and/or programmatic services. Guidelines for calculating these and other important pretrial process and outcome measures will be available in a forthcoming publication by the National Institute of Corrections entitled, "Measuring What Matters [in the Pretrial Field]." In the interim, staff at the Pretrial Justice Institute can assist in providing guidance.

Words and Phrases

Finding and Recommendation

San Mateo County's criminal justice system utilizes several words and phrases that shape decision-makers' and the public's and media's thinking and perception of the functioning of the local justice system. A few of these are mentioned here.

"Jail Crowding." During the site visit, stakeholders used several different definitions of "jail crowding" to refer to the situation in which the number of inmates exceeds the capacity of the jail facilities to hold them. There is no nationally accepted definition of jail crowding. Use of common terminology will help reduce distracting debates over definitions which can occur during meetings and through the media and inadvertently communicate a lack of stakeholder

collaboration to the public. Therefore, because stakeholders stated they want to change pretrial practices to reduce the jail population, it is recommended that an agreed upon definition of and numbers for jail bed capacity and jail crowding be developed so stakeholders can more effectively communicate with one another and with the public and media.

“Negative recommendation.” Sometimes also referred to as a “Non-Recommendation” or “No Recommendation.” Although system stakeholders know these phrases refer to instances in which the Pretrial Program does not recommend an OR or SOR release, these terms may be confusing to defendants. For example, it is likely that defendants in court misinterpret the phrase “the defendant has a negative recommendation” in a way that does not facilitate the defendant’s understanding of the proceedings. Therefore, it is recommended that in particular the terms “No recommendation,” “Non-Recommendation,” and “Negative Recommendation” be substituted with another term that is accurate but less potentially confusing or that does not have negative connotations.

“Bail.” California statutes are among those of some states that equate the term “bail” with money. This use of the term is not useful and likely contributes to the San Mateo justice system’s heavy reliance on money bail. For the reasons described in more detail below, money bail is not legally tied to the public safety purpose of bail. That is, no amount of money bail assures public safety if the defendant posts the bond. Money bail only can achieve public safety if the defendant does not post the bond and remains incarcerated. It is recommended that, as system decision-makers make changes to local pretrial policies and practice, terminology (including the term “bail”) more accurately reflecting the new policies and practices be regularly used. For now, the term “bond” may serve as a more accurate replacement for “bail” as it is used in San Mateo County in most instances.

A new publication from the Pretrial Justice Institute offers guidelines for more effective uses of common pretrial terminology – uses that are grounded in both history and the law. See Schnacke et al., (2011a).

Process Considerations

It is recommended that the Criminal Justice Work Group enhance its structure and undertake a few specific tasks that will enable the Group to maximize its time and effectiveness.

The County Manager is considering formalizing the Criminal Justice Work Group from an ad-hoc group to a committee officially sanctioned by the County Board of Supervisors. The pros and cons of this action are beyond the scope of this report. Nonetheless, this report’s recommendations could be discussed and implemented regardless of the degree of the Work Group’s formalization. At a minimum, to promote the Group’s collaboration and effectiveness and help assure regular participation by relevant stakeholders, it is recommended that meetings have an agenda with the meeting goal and activities clearly stated, start and end on time, and have minutes or notes taken with participants’ between-meeting “homework” stated.

It is recommended that the following activities occur to increase the chances that the most cost-effective (maximizing the justice system's pretrial goals of public safety and court appearance while minimizing time and expenditure of resources) outcomes can be realized.

First, it is recommended that the Group's members and any other relevant stakeholder (e.g., all bond setting judges) educate themselves about the law and science of bail administration. At a minimum, documents to read include:

- The history of bail and pretrial release (Schnacke et al., 2010)
- The third generation of bail reform (Schnacke et al., 2011b)
- Responses to claims about money bail ... (Pretrial Justice Institute, 2010)
- Glossary of terms and phrases... (Schnacke et al., 2011a)
- California Constitution Article 1, Section 12
- California Penal Code Sections 1268 to 1320.5
- Standards for Criminal Justice, Pretrial Release (American Bar Association, 2007)

It is very important that all stakeholders who will be participating in the Group's discussions of possible changes to pretrial practices read each of these documents prior to discussion. If these documents are not read first, then the discussions will be sidetracked by stakeholders' misinformation and misconceptions. A few other jurisdictions have found that allowing participants two months for reading time has worked well.

Second, it is recommended that the pretrial jail population and processing be analyzed and reported to stakeholders prior to (or very shortly thereafter) their reconvening to discuss possible pretrial improvement initiatives (see paragraph below). The data from this analysis will complement the documents-to-read listed above, will be needed to help dispel any misconceptions about the number and types of pretrial inmates, and help focus stakeholders' discussions on issues specific to San Mateo County (e.g., the extent to which higher risk defendants are bonding out of jail because they can pay the amount of their bond and lower risk inmates remain incarcerated because they cannot pay the amount of their bond). Such an analysis was beyond the time allotted for this technical assistance. It is recommended that the person performing the analysis be experienced in various jail population analysis methods and be specifically knowledgeable about which analyses are most beneficial for facilitating stakeholders' pretrial decision-making.

Third, it is recommended that the Group enlist the services of an outside facilitator for the first and subsequent meetings in which pretrial practices are discussed. The facilitator will help the group stay on task, achieve meeting goals, and foster a collaborative and productive environment. Because of the complexity and frequent subtleties of the topic, it is recommended that the chosen facilitator has substantial expertise in the law and science of bail administration and pretrial programming.

Fourth, if stakeholders make the choice to change pretrial policies and practices, they will encounter resistance. The current money-based administration of bail in San Mateo County is well entrenched after several decades of daily practice, and a special interest group (bail bondsmen and the insurance companies that back them) will very likely actively try to persuade decision-makers to leave policies and practices the same or at most make superficial changes.

Indeed, bondsmen in Santa Clara County have already developed a plan for engaging local decision-makers in that county, in San Mateo County, and in other CA counties (see California Coalition for Pretrial Accountability, c.2011). Therefore, it is recommended that stakeholders agree upon and create messaging for communication with bail bondsmen and possibly the media.

Major Issues in Bail Administration

Because the complexity of the topics below are addressed in great detail in the documents referenced above, a few important perspectives or ideas relevant to the Criminal Justice Work Group's, Judges', District Attorney's, Private Defenders', Pretrial Program's, and Sheriff's Office's interests in improving bail administration are briefly raised here for the purpose of stimulating thought and discussion that can lead to more effective and efficient pretrial practices in San Mateo County. Stakeholders would likely find these topics, among others, very stimulating and useful to discuss in the facilitated meetings mentioned previously.

Role of Risk Assessment

Stakeholders agreed that the pretrial risk assessment results in better decision-making about the type of release and conditions of bond needed to mitigate an individual defendant's risk to public safety and court appearance. However, defendants who can financially afford to bond out of jail do so without the court's knowledge of their risk (because risk is gleaned from top charge only, which is a statistically inadequate indicator of pretrial risk). Thus, defendants with greater financial means are permitted to bypass risk assessment (and pretrial supervision), whereas defendants without such financial means must participate in it. Some courts have eliminated this disparate practice for reasons of discrimination and due process.

Role of Supervision

Stakeholders agreed that pretrial supervision is used to help protect public safety and increase court appearance for defendants who may need this type of supervision. However, defendants with greater financial resources are typically permitted to pay a money bond and forgo pretrial supervision, even though they and the public might benefit from that defendant being under pretrial supervision. Other jurisdictions have eliminated this gap in public safety by requiring higher risk defendants, regardless of their financial resources, to receive pretrial supervision. When doing so, however, some jurisdictions have been careful to not couple pretrial supervision with financial bond to avoid tax-payer-funded subsidization of a private industry (which occurs when a pretrial program supervises a defendant to enhance court appearance, which is a service claimed to be provided by commercial bail bondsmen).

Role of Money

Stakeholders confirmed two aspects of California law:

- (1) The purpose of bail in California is two-fold: to protect public safety and to assure the presence of the defendant in court. Statute states that the primary purpose is to protect public safety.

- (2) A money bond is potentially forfeited only for the defendant's failure to appear. The commission of a new crime (or a violation of any other condition of bail bond, such as a no-contact order) cannot legally result in forfeiture.

Given these two aspects of law, there is no legally grounded link between a money bail bond and public safety. In addition, nationally there is no empirical evidence that shows that secured financial release (cash or surety bond) improves court appearance and public safety outcomes over and beyond that of non-secured release; it does, however, lead to substantially more pretrial jail bed use. The use of a money bail bond, in the absence of any pretrial risk assessment and pretrial supervision for defendants who would benefit from it, is actually antithetical to public safety, given the aspects and research above. This issue has many nuances and can be easily misunderstood, so further education and discussion among stakeholders will be needed.

California law states that the Superior Court shall implement a money bond schedule. The monetary amounts are not (and correctly by legal standards) prescribed by statute. The scheduled bond amounts in use in San Mateo County, although agreed to annually by the judges and characterized by proportionality (more severe charges have higher money amounts), are arbitrary in their degree. That is, the Court at any time, for example, could lower all amounts by a factor of 5, or 10, or 20, or raise the amounts by 5, 10, or 20, and very likely still achieve the same court appearance rates and law abiding rates that exist today. However, the raising of bond amounts often increases the pretrial population in jails, and the lowering of bond amounts often decreases the pretrial population in jails. Relatedly, rather than lowering bond amounts, if a jurisdiction were to eliminate bond amounts (by using the equivalent of OR or SOR bonds) or lower them to trivial amounts (e.g., \$5 or \$50), the jail's pretrial population would likely decrease even more substantially, and the bond schedule would likely still be consistent with CA statute. Indeed, if stakeholders believe (or find through testing via a temporary pilot project) that lowering the bond amounts by whatever amount would reduce the jail's pretrial population, then that would indicate that there are people in the local jail not because of their pretrial risk, but because of their inability to purchase their release. When this occurs, the jurisdiction has a lot of opportunity to reduce its jail population (and avoid constructing more jail bed capacity) while maintaining or enhancing public safety for the community.

California, like most states, does not provide judges with a preventive detention option except in the most extreme circumstances. Therefore, judges who decide a defendant is too risky to the public if released have no way to assure public safety unless they set a financially unattainable money bond. When this is done, however, it raises the question of excessive bail, which is prohibited by law. In addition, when large sums of money are used for preventive detention, confusion about the role of money bail in assuring public safety is exacerbated.

Stakeholders are encouraged to explore these topics and others that arise from the use of money bail. Only when the role, with pros and cons, of money in the bail process is fully thought about, discussed, and altered can a jurisdiction move toward a more safe, effective, and fair administration of bail and the full potential of the local pretrial services program be realized.

References

- American Bar Association. (2007). ABA Standards for Criminal Justice, Third Edition, Pretrial Release. Chicago, IL: American Bar Association.
- California Coalition for Pretrial Accountability. (c.2011). A Joint Project of California Bail Agents Association, Golden State Bail Agents Association.
- Pretrial Justice Institute. (2010). Responses to Claims About Money Bail for Criminal Justice Decision-Makers. Washington, DC: Pretrial Justice Institute.
- Schnacke, T. R., Jones, M. R., & Brooker, C. M. B. (2010). The History of Bail and Pretrial Release. Washington, D.C.: Pretrial Justice Institute.
- Schnacke, T. R., Jones, M. R., & Brooker, C. M. B., & (2011a). Glossary of Terms and Phrases Relating to Bail and the Pretrial Release or Detention Decision. Washington, D.C.: Pretrial Justice Institute.
- Schnacke, T. R., Jones, M. R., & Brooker, C. M. B., & (2011b). The Third Generation of Bail Reform. DULR Online, the Online Supplement to the Denver University Law Review. Denver, CO: University of Denver Sturm College of Law.

Appendix A

The following agenda and schedule of events was prepared by the County Manager's staff:

**Pretrial Program Assessment Schedule
San Mateo County
County Manager's Office (CMO Conference Room)
400 County Center (Hall of Justice)
Redwood City, CA 94063**

Wednesday, May 11, 2011

- | | |
|------------------|---|
| 9:00-9:50 a.m. | Introductory Meeting Mary McMillan, Deputy County Manager |
| 10:00-10:50 a.m. | Pretrial Services Program Stuart Forrest, Chief Probation Officer Fidel Rodriguez, Probation Services Manager-Pretrial Services Henry Guevarra, Senior Probation Officer |
| 11:00-11:50 a.m. | Open |
| 12:00-12:50 p.m. | Lunch with Judges Judge Freeman, Superior Court Judge Foiles, Superior Court Judge Forcum, Superior Court Judge Novak, Superior Court |
| 1:00-1:50 p.m. | Health System Jean Fraser, Health System Chief Stephen Kaplan, Behavioral Health & Recovery Services Director |
| 2:00-2:50 p.m. | Sheriff's Office Trisha Sanchez, Assistant Sheriff Captain Mark Hanlon, Corrections Division Lieutenant Tim Reid, Corrections Division Admin. Commander Program Services Manager Debra Keller, Corrections Division Classification Sergeant Scott Kirkpatrick, Corrections Division Lieutenant Deborah Bazan, Jail Planning Unit |
| 3:00-3:50 p.m. | Private Defender John Digiacinto, Chief Defender Myra Weiher, Assistant Chief Defender |
| 4:00-4:50 p.m. | District Attorney's Office Steve Wagstaffe, District Attorney Karen Guidotti, Chief Deputy District Attorney |

Thursday, May 12, 2011

- 8:00-8:40 a.m. **County Manager's Office**
David Boesch, County Manager
Jim Saco, Budget Director
Michael Bolander, Budget and Finance Analyst
Location: CMO Conference Room, County Manager's Office- Hall of Justice
- 8:45-9:45 a.m. **Observation: Arraignments- Superior Court**
Judge Novak
Location: Court Room 2A, Hall of Justice (400 County Center), Redwood City
- 10:00-11:30a.m. **Observation: Defendant's Intake for Pretrial Supervision**
Fidel Rodriguez, Probation Services Manager-Pretrial Services will escort you to
Location: 601 Allerton Street, Suite 100, Redwood City
- 11:30-12:30 p.m. Open
- 12:30-1:30 p.m. **Observation: Pretrial Risk Assessments**
To be escorted by Kathleen Irvine and Debra Keller, Sheriff's Office
Location: Meet in the reception area of the County Manager's Office
- 1:30-2:45 p.m. **In-Custody Arraignments**
Location: Court Room 4A, Hall of Justice (400 County Center), Redwood City
- 3:00-3:50 p.m. **San Mateo County Supervisors**
Supervisor Groom, President
Supervisor Tissier, Vice-President
Location: CMO Conference Room, County Manager's Office- Hall of Justice
- 4:00-4:50 p.m. **San Mateo County Supervisors**
Supervisor Jacobs Gibson
Supervisor Horsley
Location: CMO Conference Room, County Manager's Office- Hall of Justice

Appendix B

Criminal Justice Work Group Meeting Friday, May 13, 2011 11 a.m. – 2 p.m.

Agenda

Meeting Purpose

To begin to identify and discuss opportunities for improving the efficiency and effectiveness of pretrial decision-making and programming within the context of local justice system goals and resources

| <u>Item</u> | <u>Facilitator</u> |
|---|-----------------------|
| Call meeting to order State purpose of meeting Introduce participants | Boesch |
| Review Agenda | Jones |
| Review scope and nature of technical assistance | Jones |
| Learn about and discuss findings Discuss meaning and implications Receive recommendations | All Attendees & Jones |
| Begin action planning of next steps | All Attendees |
| Call meeting to a close | Boesch |