

STATE COALITION OF PROBATION ORGANIZATIONS



State Office • 9719 Lincoln Village Drive, Ste. 501, Sacramento, CA 95827 • (916) 368-0158

FAX: (916) 368-5820

REPORTING, RECORD-KEEPING AND REALIGNMENT:

Risk Management for Deputy Probation Officers in the AB 109 Environment

The implementation statewide of the public safety realignment plan (AB 109/AB 117) brings with it the risk of greater liability for the deputy probation officers who will be responsible for supervising hundreds of parolees, high-risk offenders, and non-violent prisoners who will be released or transferred into local custody and communities. As the representative of probation peace officer associations throughout California, the State Coalition of Probation Organizations prepared this memorandum to assist its member organizations in educating line staff about the potential risks involved as we become “local parole agents” with higher caseloads and diminished resources.

1. Document, Document, Document

The maxim, “if it isn’t in writing, it doesn’t exist,” applies doubly to reports, department memoranda, statistics and record-keeping for the AB 109 population. Chief probation officers, county law enforcement officials and other stakeholders in the implementation of realignment will base opinions about the success or failure of the program in the coming months on documentation.

For probation peace officers, maintaining an adequate “paper trail” on the AB 109 population means using defensive report-writing, detailed record-keeping and constant written communication to supervisors. When an AB 109 parolee or other offender commits a new crime, particularly a violent, high-profile offense, every other stakeholder will look to the deputy probation officer charged with that offender’s supervision. You and your department will be best prepared to defend against potential liability and litigation with detailed written records and reports.

2. Obtain Supervisor Approval for Discretionary Actions Whenever Possible

Notwithstanding the dozens of rules, regulations, policies and procedures necessary to implement realignment consistent with existing statewide mandates for probation services, probation peace officers will continue to be vested with broad discretion in carrying out post-release community supervision requirements, managing alternative sentencing programs and home supervision, and addressing other program and supervision issues under AB 109. The potential liability involved in supervising a prison population that has been released to communities and local control means you should obtain supervisor approval whenever possible for any discretionary action affecting one of these new or returning “probationers.” Put another way, while it has always been risky to make significant decisions on probation cases without peer review and supervisor approval,

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involving a supervisor in a decision on an AB 109 offender may be your only protection against civil and administrative liability if a failure of supervision occurs.

3. If Armed, Stay Armed; If Not Armed, Get Armed!

State parole officers are armed because the population on parole is armed. As “local parole agents” under realignment, probation peace officers are more likely to confront armed probationers and to have a need to use firearms. Liability in officer-involved shootings often turns on the training and qualifications of the actor officers, whether deputy sheriffs, police or probation. In this environment, it is critical to maintain your firearms qualification and to seek additional training, if necessary, to be prepared for armed confrontations. You should maintain your own training records, certificates and any other evidence of specialized training to best protect yourself against a finding of individual liability for a violation of civil rights resulting from a shooting or other use of force.

In those counties where probation peace officers remain unarmed in field and transportation assignments, realignment may present an argument for arming officers who will be involved in community supervision. Law enforcement and other public safety stakeholders – district attorneys, judges, sheriffs, police chiefs – have raised concerns in many communities and in the Legislature about the increased danger to the public from the AB 109 population. Those interests may support your organization’s push for arming probation peace officers in the realignment environment.

4. Don’t Assume You Can’t Be Sued

Civil liability is “[t]he quality or state of being legally obligated or accountable; legal responsibility to another or to society, enforceable by civil remedy; i.e., liability for injuries. (*Black’s Law Dictionary*, 8th Edition, 2004.) In practice, civil liability is the everyday “Sword of Damocles” for the law enforcement profession – to be avoided through awareness, not fear.

As a peace officer employee of a government agency, you can be sued in your official and individual capacity for actions you take on behalf of the employer. Many lawsuits against public safety officers are brought in federal court as “§ 1983” (42 U.S.C. § 1983) civil rights lawsuits; often, these cases claim individual liability by the peace officer(s) involved in a use of force, a detention or arrest, or a decision affecting custody or probation status.

In general, a legal concept of “immunity” protects public safety officers whose discretionary actions cause injury; however, there are many ways to lose immunity. Make an arrest without probable cause, violate a probationer’s Fourth Amendment rights, exercise peace officer powers off-duty, engage in excessive force, or commit an illegal act on duty – you will lose even qualified immunity and risk personal liability for your actions.

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5. Get Educated on Realignment and the Law

With the implementation of realignment and the transfer of an adult prison population to local custody and supervision has come a wide range of programs and policies that vary from county to county. As a probation peace officer, you and your SCOPO member organization have an opportunity to develop “labor-side” expertise in the implementation of AB 109. Local training and education by your association as well as your Probation Department will be critical to managing and avoiding civil and administrative liability in the AB 109 environment.

This memorandum is an overview and is not intended to be an exclusive list of potential risks, issues and defenses affecting probation peace officers involved in the implementation of public safety realignment. SCOPO member organizations and individual probation peace officers should not act on any of the information contained in this memorandum without further discussion with association counsel or other representatives.