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Economy & Efficiency Commission Presentation

Editorial Note: Although every effort has been made to insure the accuracy of the material in this presentation, the scope of the material covered and the discussions undertaken lends itself to the possibility of minor transcription misinterpretations.

**PRESENTATIONS BY
The Honorable Steve Cooley
District Attorney
Los Angeles County**

November 3, 2011

Overview of AB 109

Chairman Barcelona greeted the Honorable Steve Cooley, District Attorney for Los Angeles County and welcomed him while turning it over for Mr. Cooley to speak to the Economy and Efficiency Commission.

State's Prison Realignment Process

Mr. Cooley stated that California's new prison realignment law is expected to send as many as 8,000 offenders into the LA County jail system by next year, according to a report by the Los Angeles District Attorney's Office. He stated that the jails only have the funding to add 1,800 additional beds. He stated that officials are considering granting early release to thousands of inmates awaiting trial. The Sheriff's department is now figuring out which inmates to free.

Mr. Cooley stated that On October 1, 2011, the state's Public Safety Realignment program (Realignment) began implementation. He stated that the transfer of responsibilities from the state to the counties poses a grave threat to public safety. He stated that it will proceed without adequate infrastructure, funding and legal protections for all involved agencies. He stated that Realignment is a deeply flawed program and its consequences will take both a financial and human toll.

Mr. Cooley stated that in January, the Governor introduced his proposed Realignment program. He stated that he characterized the proposal as a "public safety nightmare." He stated that he issued a white paper in February outlining the issues. He stated that although some changes were made to the final Realignment program, the overall threat to public safety remains.

Mr. Cooley stated that incarceration appropriate to the crime provides punishment, deterrence and protects the public. He stated that although over 60 felonies and special allegations were excluded from mandatory local housing in the final version of Realignment, many serious criminals sentenced to lengthy state prison sentences will still be required to be housed locally. He stated that such sentenced prisoners will take up beds for longer periods of time and, cumulatively, will substantially decrease available bed space. He stated

that in his white paper he provided examples of six cases involving serious felony criminal conduct, the incarceration for which would be local housing under the original Realignment proposal. He stated that the current version of Realignment excludes over 60 additional felonies and special allegations from local housing. He stated that however, even with these changes, four of the six case examples he provided would still not receive State prison sentences. He stated that the charges are considered non-violent, non-serious, non-sex offenses and are not on the list of approximately 60 additional excluded felonies and special allegations.

Mr. Cooley stated that the cases described earlier are just a few examples of convicted felons sentenced to state prison who will be housed locally under Realignment. He stated that there will be thousands more. He also stated that in 2009, approximately 8,000 Los Angeles County defendants sentenced to state prison would now be required to be housed locally in county jail. He stated that in 2010, approximately 7,400 Los Angeles County defendants sentenced to state prison would now be required to be housed locally. He stated that Los Angeles County jails are under a long standing federal court ordered population cap and are already at or near federally mandated capacity. He stated that Realignment will result in thousands upon thousands of convicted felons released to our communities with minimal supervision.

Mr. Cooley stated that Realignment transfers the responsibility of parole revocation hearings to the Superior Court, District Attorneys and Public Defenders' Offices for N3 offenders released from state prison on or after October 1, 2011. He stated that in 2013, that responsibility will expand to serious, violent and sex offenses. He also stated that the California Department of Corrections and Rehabilitation (CDCR) estimates that the county will be responsible for monitoring 5,800. He stated that all parolees or post release supervised persons found in violation of parole or community supervision will serve their time in county jail. He stated that only those on parole for life sentences can be returned to prison on a parole revocation. He stated according to the CDCR, in calendar year 2009, more than 18,000 parole violators returned to prison with a new term for violating parole. He stated that of this number, nearly 6,500 inmates were from Los Angeles County, slightly more than one-third of the total parole violators. He stated that under Realignment, parole violators can only serve a maximum of 180 days in the county jail. He stated that conservatively estimating that half of the 6,500 violators would qualify for local revocation hearings, the Superior Court, District Attorney's Office and Public Defender would conduct 3,400 such hearings each year. He stated that if each violator served 30 days spaced evenly throughout the year, the county would need more than 250 additional beds per month, bed space that is not currently available. He stated that the number only reflects those returned to custody on parole violations not the number of actual revocation hearings which would be higher.

Mr. Cooley stated that there will be an increase in liability for the county as immunities enjoyed by state employees were not transferred to county employees. He stated that pursuant to the county's Realignment Implementation Plan, both the Sheriff and Chief Probation Officer assume varying degrees of responsibility for post-release community supervision parolees. He stated that according to a recent analysis by County Counsel, the Sheriff himself would be considered a State Officer and immune from liability in state and possibly federal court. He stated that Sheriff's Department employees would not possess such immunity and would be subject to individual liability for which the county is required to defend and indemnify. He stated that the analysis goes on to say that the Chief Probation Officer and his employees lack immunity as well. He stated that in the absence of a Constitutional amendment, legislation would be needed to give the Chief Probation Officer and both Probation and Sheriff employees immunity from 1983 suits.

Mr. Cooley stated that public safety should be government's highest priority. He stated that Realignment jeopardizes the fundamental right of the people to a safe and just society. He stated that this program predictably will result in a tremendous spike in crime in Los Angeles County and statewide. He also stated that it will add expensive new burdens to a criminal justice system which, prior to Realignment, had registered a remarkable 60-year low in crime rates. He stated that Realignment casts too wide a net in defining "low level offenses". He stated that criminals will escape adequate punishment. He stated that those who view Realignment as a positive development are not just overly optimistic, they are flat wrong. He stated that we are in the awful position of having to wait for further crime and substantial victimization to be proven right.

AB 109

Mr. Cooley stated that currently we are all enjoying the lowest crime rate in 60 years. He stated that one of the statistics that most support the background of the low crime rate is the number of homicides. He stated that back in the late 70's, early 80's, murders were running at about 2,500 a year in Los Angeles County and a little over 1000 sometimes approaching 1,100 in the City of Los Angeles. He stated that last year Los Angeles County recorded 900 murders which is a drop of 1,600 although the population had increased by 2 million people in that timeframe of 3 or 4 decades. He stated that the City of Los Angeles recorded a little over 300 murders, down 1,000. He stated that many people have many theories on why this is but his theory is that the incarceration rate was at an all time high and the justice system, law enforcement operators, and judges was doing a great job at identifying those people who should be taken off the street and placed behind bars. He stated that the incarceration rate hit about 170,000. He stated that when he first became a Deputy D.A. in 1974, there were approximately 30,000 people in the state prison system. He stated that in July 1977, Governor Jerry Brown signed a term sentence law which went from a system of rehabilitation and releasing people when they were corrected to a system that was designed with a primary purpose to punish people for their criminal history and current criminal offense. He stated that it is a system that prosecutors and judges mastered in identifying people who should go to prison. He stated that that is against AB 109. He stated that he has called it a "public safety nightmare" and a "predictable criminal justice disaster".

Mr. Cooley stated that he is not happy with AB 109 because the very low crime rate that the county has experienced and enjoyed is going to disappear. He stated that there will be a spike in crime like we have never seen before. He stated that essentially the department prosecutes 60,000 a year, 5,000 are either dismissed or reduced to misdemeanors, leaving 55,000. He stated that of the 55,000, 15,000 or so will go to state prison. He stated that of the 40,000 felons, 32,000 get probation. He stated that he is suggesting that the measurable crime rate is going to spike when literally in L.A. County well over 10,000 people who should be in are going to be out. He stated that any assertion that the county jail system can manage the incarceration is a figment of someone's imagination. He stated that there is going to be approximately 8,000 individuals sent to state prison as non-violent, non-serious, non-registerable sex offenders. He stated that here in Los Angeles County, people should have gone to prison but didn't and they will be among us. He stated that these people will not be in Sheriff Lee Baca's jail system because he does not have room. He stated that the system has been kept alive due to very aggressive monitoring by ACLU of the early release program for many years. He stated that the Sheriff will have to revert to the alternative in greatly expanding early releases to alternative custodial settings: day centers, house arrest, rehabilitation, and ankle bracelets. He stated that they will be credited as if they're in state prison. He stated that under provisions of 109 he might very well be engaged in alternative custodial settings.

Mr. Cooley wants the Board of Supervisors to nix any notion of allowing the sheriff to release pretrial suspects. He stated that shifting responsibility from the courts to the sheriff is something that he thinks represents an inappropriate shift of historic responsibility from the judiciary to the executive branch. He stated that the Board of Supervisors can actually grant the authority to a sheriff to release individuals who are in jail on a pretrial basis. He stated that the Sheriff has suggested that, in order to manage his jail, he might have to engage in that. He stated that the D.A. is going to oppose it. Mr. Cooley stated that we got to AB 109 by the legislature abandoning what should be their highest priority and their core mission. He stated that the process got too expensive for them and it is just simply bad economic times. He stated that the legislature has shifted their burden as they have done on previous occasions under the neutral term of realignment and letting the counties handle it. He also stated that it's not just about how the Sheriff manages it; it's about AB 109 essentially being a fool's errand. He stated that he has been consistent of the criticism of AB 109. He stated that he made a good record and at the end of the day in a couple of years everyone will say "Cooley was right." He stated that people will look back and say that they made a huge mistake because a lot of people are dead or being very poorly victimized because of the misjudgment and lack of priorities the state has made.

Questions

Commissioner Fuhrman stated that out of the stats that were looked at about a year ago, almost 90% of the inmates in the jail system were pretrial. Mr. Cooley replied that is exactly correct. Commissioner Fuhrman asked if there is some way to help those that are innocent. He added that technically they are innocent. Mr. Cooley replied that they are presumed innocent but could assured Mr. Fuhrman that they are usually guilty. Mr. Cooley stated that there are very violent elements of pretrial detainees that are the 3rd strikers, murders, robbers, and rapist. Commissioner Fuhrman asked if it would be possible to find 3,000 to 4,000 pretrial detainees that perhaps couldn't make bail because they are just too poor. Mr. Cooley replied that if bail is \$50,000 or less, the Sheriff doesn't hold you. He stated that the concern he has is the provision with AB 109 that if the Board of Supervisors were to authorize it, the Sheriff would have authority on his own to release any pretrial detainee who has a misdemeanor and is in for 30 days. He added that that is a safety valve Sheriff Baca will go to if he doesn't get additional jail bed spaces. He stated that CCJCC is a group that he and Chair-Emeritus Philibosian sit on together. He stated that they have tried to get the Sheriff's command staff to tell them how many beds they are going to make available to handle the AB 109 workload. He stated they threw numbers out but he didn't get the beds he promised, and he was already releasing inmates early. He stated that the early release program defeats one of the primary purposes of the criminal justice system which is to deter criminality.

Commissioner Glassman asked that since knowing this was going to happen, what actions the District Attorney is looking at or talking about with colleagues in the criminal justice system that we might see in LA County? Commissioner Glassman added that he had read a lot on the use of electronic monitoring and expanding it as one of the ways to deal with this problem and asked Mr. Cooley for his thoughts on both topics. Mr. Cooley replied that the first thing the he did when realizing it was a reality, his department engaged in an extensive analysis for purposes of training the personnel on the new law. He stated that they have emphasized the fact that they got to train all staff at every level: paralegal, filing deputy, trial lawyers, and head deputy to look for the serious or prior violent offense in the criminal history because that would remove them from the "non-, non-, non-" and they could be placed in state Prison. He stated that in terms of coming up with mechanisms once you're convicted and sentenced it is more on the Board of Supervisors' and the Sheriff's laps.

Commissioner Kamenir-Reznik stated that she became aware years ago that all kinds of work were being done with 4th and 5th graders in terms of gang mediation and self esteem programs in the schools and the significant effect it has had on crime prevention.. She asked what role does the District Attorney's office play in the program and what kind of advocacy can be done to increase the programs that would deter later crimes. She also asked what is happening with sex offenders fostering homes and childcare centered facilities. Mr. Cooley replied that to his understanding the State Department of Social Services did not do the appropriate background check that they should have done and were compelled by law to do. He stated that he does not think that there was a failure at the county level when it comes to checking those individuals. He stated that in terms of the Crime Prevention Program they are an essential component in terms of achieving a fair and safe society. He stated that the District Attorney's office as the project lead has about 120 Deputy D.A.'s, D.A. employees, and D.A investigators and a few attorneys from other public law offices that go out to visit the schools and make presentations on subjects that assist the children in resisting temptation of gangs and drugs and gives them tools like a semester law program that is very structured. He stated that when that doesn't work and the child still goes down the wrong path you have to have a strong juvenile justice system where they are held accountable. He stated that in some point and time when all the opportunities don't work you have to fall back on what has been true which is the prosecution and appropriate punishment.

Commissioner Hinsche Otto asked if the judge's rule any differently knowing that there is no room in state prison. Mr. Cooley stated that it has only been around 30 days and the D.A is trying to get a feel for what the dynamics are in terms of criminal justice system and whether there will be moiré plea bargaining or case settlements because of AB 109 or will there be more jury trials because of AB 109. He stated that offenders may feel since there is no real consequence for going to trial they don't need a plea bargain or the case settled, just simply go ahead and try the case. He stated that this could have terrible impacts on the justice system. He stated that they are trying to monitor it but he doesn't believe there is enough data or anecdotal experience to say this is what has happened.

Commissioner Hinsche Otto asked if Mr. Cooley is working with the judges at all to think it through. Mr., Cooley stated that the D.A is independent and the Executive Branch of Government and the judges are the Judicial Branch of Government. He stated that the groups do talk back and forth but both parties are separate entities.

Commissioner Safier asked if there any areas in his office that the E&E Commission could consider looking at to help improve economy and efficiency at the D.A's office. Mr. Cooley replied that he thinks his department is running a pretty good ship at this time. He stated that he is always open to suggestions and wouldn't mind taking the question back to his management staff. He stated that overall the D.A.'s office does a great job considering that the department has been under budget, has managed all the department's curtailments, and have done a great job at responding to crazy things such as AB 109 and other legislation issues.

Chairman Barcelona expressed his appreciation to the Honorable Steve Cooley and invited him to come back to speak to the EEC in the near future and the Commissioners applauded.

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Kenneth Hahn Hall of Administration, Room 163, 500 West Temple St.,
Los Angeles, CA 90012
Phone (213) 974-1491 FAX (213) 620-1437 [EMail eecomm@co.la.ca.us](mailto:EMail_eecomm@co.la.ca.us)
WEB eec.co.la.ca.us