

## **PROPOSAL:**

The District Attorney requests authorization to hire a Victim Witness Advocate pursuant to Realignment funding. At the present time the following funds are immediately available:

\$66,000.00- Money in Trust under 30025(f)(12) Government Code.<sup>1</sup>

**Plan A:** Cost including benefits of full time VW advocate:

\$66,583 x 3 yrs = \$199,749

Total additional Realignment funding = \$133,749 : One full time VW Advocate (to be proposed in the 2014-2015 Community Corrections Partnership budget.)

**Plan B:** (based narrow interpretation of the 30025(f)(12) GC requirements): One full time VW Advocate.

Two years of AB 109 funds \$66,583 x 2 = \$133,166 (to be proposed in the 2014-2015 Community Corrections Partnership budget.)

## **VW SERVICES AND REALIGNMENT**

The District Attorney has a California Constitutional mandate to provide certain services to crime victims and the balance between supervision of criminals and services to victims must be maintained. We know that audits of realignment funding are likely to inquire into custody conditions, probation supervision services and services to victims under realignment and we have to be in compliance in all three

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<sup>1</sup> **30025 (f) (12)-** The moneys in and transferred from the District Attorney and Public Defender Account, and the moneys in its successor subaccount and special account, the District Attorney and Public Defender Subaccount and the District Attorney and Public Defender Growth Special Account, **shall be used exclusively to fund costs associated with revocation proceedings involving persons subject to state parole and the Postrelease Community Supervision Act of 2011 (Title 2.05 (commencing with Section 3450) of Part 3 of the Penal Code), and may be used to fund planning, implementation, and training costs for those proceedings.** The moneys shall be allocated equally by the county or city and county to the district attorney's office and county public defender's office, or where no public defender's office is established, to the county for distribution for the same purpose.

areas. Beyond that, however, we need to honor the rights of victims and the only way to accomplish that in our new realignment world is with additional and expanded victim services made necessary by realignment. The principal duties of a victim/witness advocate are as follows:

- ❖ Initiates immediate contact with victims of crime;
  - Assesses situation and determines if restitution is a factor.
  - Develops case plans to provide necessary services.
  - Provides information on restitution and reimbursement
  - Advises victims of the judicial process and requesting restitution.
  - Insures that victim understands changes in sentencing under realignment.
  - VW assists victims and witness regardless of the class of crime (Felony and Misdemeanor)
  
- ❖ Conducts follow up reviews to reassess situation/case;
  - Advises on case status and explains sentencing and post-conviction proceedings and options
  - Provides assistance to complete documentation and with filing any requests for restitution.
  
- ❖ Assists victims of crime with writing and filing victim impact statements, and compiles the necessary data to assist with restitution.
  
- ❖ Receives and disperses restitution payments:
  - Posts all payments received and distributed following guidelines established by law.
  - Reviews data to ensure accuracy; detects any errors and corrects accordingly.
  - Once a case is adjudicated provides advice to the victim(s) of any restitution ordered and refers the victim to appropriate agencies to collect restitution.
  - If defendant does not pay restitution, advises victim of available recourses.
  
- ❖ Compiles and analyzes data;

- ❖ Confers with judicial personnel, law enforcement agencies, community groups and victims of crime to determine needs.
- ❖ Review completed forms to verify accurate and complete data.
- ❖ Obtains required authorizations and submit completed forms to appropriate agencies.
- ❖ Provides information, guidance and training to criminal justice agencies, community and service groups, educational personnel, and the public at large on issues related to victim rights, including restitution and realignment.
- ❖ Attends departmental meetings, seminars, and training sessions as required to remain knowledgeable of governmental/departmental operations and to stay current with changing policies, procedures and codes.

After police contact, the victim's first contact with the criminal justice system is the advocate. The advocate's day begins with reviewing the in-custody arraignment calendar and contacting each victim of the charges filed. The advocate immediately starts the "information and education" process of the job. It is important to remember that the advocate provides assistance to the victims, even if a charge is not filed due to some legal or factual infirmity. It's the responsibility of the advocate to explain the criminal justice system to the victims, and prepare the victims for the court process, including testimony.

Post Release Community Supervision and 3000.08 PC parole revocations involves doubling the victims and witnesses. The advent of PRCS and parole revocations at a local level greatly increases the number of potential victims, which increases the service requirements for the victim witness advocate. Prior to realignment, persons convicted of crimes involving a California Department of Corrections (State Prison) sentence were handled by the Victim Services Division at CDCR. CDCR handled restitution, victim notification of hearings, violations, prison movement or release, access to parole hearings, notification of hearing outcomes, parolees' current whereabouts and generally guiding the victim through

the post-conviction process. The post realignment reality in El Dorado County is that CDCR has deferred the revocation process, including victim/witness notifications, education, and assistance to the District Attorney.

PRCS and parole violators often have two sets of victims entitled to all the notifications contemplated by the Constitution. The victim of the underlying crime and any “new” victim as a result of a violation have a right to know of the violation, the disposition, the “max 180 day at half time credit” for a violation”, restitution, hearing or violation disposition and ultimate location of incarceration. A PRCS or parolees original commitment crime victim(s) are often based on crime activity that did not occur in El Dorado County. The process of determining who those victim(s) are, and locating that victim, adds to the burden of the advocate.

Post realignment collection of restitution from “County Prison: commitments is an added task for the Victim Witness Program The January 1, 2013 Penal Code section 2085.5 mandate was for the counties to start collecting victim restitution from inmate accounts. The process for collecting victim restitution from “County Prison” commitments is a “work in progress.” This places a notification and educational component on the VW advocate. The advocate must explain why restitution is not being deducted from jail monies and help the victim with the alternative remedies, such as civil judgment and revocation/modification proceedings.

Similarly sentencing has a significant educational component. The “Truth in Sentencing” portion in the Constitution places the Victim Witness advocate in a position of explaining that two years really means one year and that all felonies

that do not involve serious or violent felonies and all PRCS and 3000.08 revocations “automatically” earn half time credit. The advocate often becomes the ‘sounding board” for a penal system that offers less than ‘Truth In Sentencing.” The advocate’s job involves educating an often unaware victim on the sentencing reality.

### **EL DORADO COUNTY VICTIM WITNESS PROGRAM STATISTICS**

Currently the Victim Witness Advocates consists of one supervisor and three Advocates. The supervisor and each advocate are responsible for carrying a full case load. The data below demonstrates how many cases Victim Witness staff handled and continue to handle. This data does not include PRCS and 3000.08 parole case involving the Victim Witness Program:

#### Number of New Victims served by VW:

2011 – (1,362)

2012-- (1,459)

2013-- (1,371)

#### Number of Continuing Services to victims (services provided after initial contact):

2011- (9,713)

2102- (10,172)

2013 - (9,131)

#### Number of Grand Jury Cases where an advocate was assisting:

2011- (9)

2012--(3)

2013- (13)

Number of State Prison Cases that advocates provided follow up services to victims:

2011- (102)

2012 -(78)

2013 - (67)

Trial Information (VW advocate being directly involved in the trial process)

2011- 20 weeks

2012 - 19 weeks

2013 - 47 weeks

The District Attorney's Office does not have reliable statistics on how many sentencing, preliminary or restitution hearings involved the direct assistance and presence of a VW advocate.

**PRCS and 3000.08 STATISTICS**

As of the Dec 31, 2013, El Dorado County Probation supervised 107 PRCS clients. Probation filed 117 PRCS violations between January 2012 and October 2013 and used (67) - 10 day flash incarcerations . Probation does not have records on how many of the PRCS defendants' original crime was committed from outside El Dorado County.

Since the start of local Parole Revocations, the Superior Court reports that (67) parole petitions (3000.08 PC) have been filed.

## **VICTIM'S RIGHTS**

Victims' Rights (Marsy's Law) was passed by the voters of California and became effective on November 5, 2008. The law, which amended our state constitution (Art. I, § 28) as well as the Penal Code<sup>2</sup>, created a substantial expansion of existing victims' rights and imposed certain obligations on the part of district attorneys, peace officers, probation departments, CDCR, parole, the courts, and the Governor.

The purpose and intent in enacting this initiative was to provide victims with rights to justice and due process. These rights include the expectation that felons be appropriately detained in custody, sentenced, and sufficiently punished so that "the public safety is protected and encouraged as a goal of highest importance." The California Constitution provides that "victims of crimes have a collectively shared right to expect that persons convicted of committing crimes are sufficiently punished in both the manner and the length of the sentences imposed by the courts." (Art. I, § 28(a)(5).)

The California Constitution enumerates several rights to which victims are entitled, including, but not limited to the right to:

1. Have the safety of the victim and the victim's family be the primary consideration in fixing the amount of bail and setting release conditions for the defendant;
2. **Reasonable notice, upon request, of all public proceedings at which the defendant and the prosecutor are entitled to be present, and to be present at all parole or other post-conviction release proceedings;**

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<sup>2</sup> Penal Code section 679.02.

3. **Be informed, upon request, of the scheduled release date of the defendant;**
4. **Seek and secure restitution;**
5. **Be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender; and**
6. **Have the safety of the victim, the victim's family, and the general public considered before any parole or other post-judgment release decision is made.**

Marsy's Law added a truth-in-sentencing provision to the California Constitution. This provision states that sentences imposed upon criminal wrongdoers "shall be carried out in compliance with the courts' sentencing orders, and shall not be substantially diminished by early release policies intended to alleviate overcrowding in custodial facilities.

The Realignment legislation did not pass with sufficient votes to amend the Constitutional mandates of Article I, Section 28. Such sweeping changes regarding pre-conviction release of prisoners, conduct credits, sentencing, punishment, and parole creates a conflict with existing law. The conflict between the Realignment and the California Constitution has increased the complexity of the Victim Witness Advocates duties in protecting the due process rights of the victims and witnesses.

### **REALIGNMENT HISTORY**

On April 4, 2011, Governor Brown signed AB 109, which redefined felonies and shifted responsibility for both supervising and housing certain convicted felons and parolees from the state to the county. Implementation began on October 1, 2011.



The Legislature codified its intent regarding Realignment in Penal Code Sections 17.5 and 3450. The Legislature declared that realigning “low-level offenders” to locally run community-based correctional programs, which are strengthened through community-based punishment, evidence-based practices, improved supervision strategies, and enhanced secured capacity, will improve public safety outcomes. The Legislature maintained that the provisions of Realignment are not intended to alleviate state prison overcrowding.

The Realignment legislation mandated that felons convicted of approximately 500 different crimes serve their prison sentence in county jail instead of state prison. Such felons must be non-violent, non-serious, and non-sex offenders (Non Non Nons). Additionally, when these “Non Non Non” persons are released from State Prison their supervision will be handled at the county level under Post Release Community Supervision (Penal Code section 3450-3458).

The responsibility for litigating PRCS violations that require court intervention has fallen to the district attorney’s office and the public defender’s office. Government Code Section 30025(f)(12) requires that the District Attorney and Public Defender accounts in the Local Revenue Fund be used exclusively to fund costs associated with parole and post release community supervision revocation proceedings.

Effective July 1, 2013 Penal Code Section 3000.08 applied to inmates released from prison or released directly to parole, on or after July 1, 2013, after serving a term for:

1. A serious felony (Penal Code § 1192.7(c));
2. A violent felony (Penal Code § 667.5(c));

3. A crime for which the parolee was sentenced as a third striker (Penal Code § 667(e)(2)/1170.12(c)(2);
4. Any crime where the parolee is classified as a High Risk Sex Offender; or
5. Any crime where the person is required as a condition of parole to undergo treatment by Department of Mental Health pursuant to Penal Code section 2962 (Mentally Disordered Offenders).

CDCR and the Board of Parole Hearings (BPH) will continue to handle parole supervision for specified offenders, but the county courts, prosecutors and public defenders will handle parole revocation starting July 1, 2013. Parolees subject to Penal Code section 3000.08 who are being held for parole violation in a county jail on July 1, 2013, will remain subject to the jurisdiction of the Board of Parole Hearings. **All** other offenders released from prison are to be placed on post release supervision pursuant to Penal Code Section 3450–3458 and supervised at the county level.

Penal Code Section 3000.08(k) provides that an offender, who is on parole and qualifies for community supervision, shall discharge from state parole at the time of release to community supervision.

The Realignment legislation provides very little protection to Victim's Rights pursuant to Article I Section 28(a)(4) of the California Constitution. Other than a passing legislative statement that Realignment was not intended to alleviate prison overcrowding and the amendment to victim restitution in Penal Code Section 2085.5 , the legislation is almost devoid of any consideration on Victims' Rights.

## **CONCLUSION/OBJECTIVES**

The District Attorney's Victim Witness Programs has established objectives and goals that can only be met with one additional VW Advocate position. Those objectives are:

1. Reliable communication with probation regarding the use of flash incarceration so that necessary notifications and restitution deductions can be monitored and enforced;
2. Reliable communication with CDCR regarding victim and witness information from those CDCR parolees released to El Dorado County especially those parolees who's commitment crime occurred outside El Dorado County;
3. Reliable data entry in the release notification system (commonly referred to as the VINE.);
4. Restitution withdrawal monitoring, enforcement and collection pursuant to Penal Code section 2085.5;
5. Sheriff and Probation Involuntary Release policy notifications, monitoring and enforcement.