

**NAPA COUNTY
GRAND JURY**

2008-2009

Final Report on

**NAPA COUNTY
ADULT PROBATION
DEPARTMENT**

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A Tradition of Stewardship
A Commitment to Service

NAPA COUNTY GRAND JURY

P.O. BOX 5397

NAPA, CALIFORNIA 94581

April 2, 2009

The Honorable Raymond A. Guadagni
Presiding Judge
Superior Court of the State of California
County of Napa
825 Brown Street
Napa, CA 94559

Dear Judge Guadagni,

Pursuant to Section 933(a) of the California Penal Code, the 2008-2009 Napa County Grand Jury submits to you its Final Report on the Napa County Adult Probation Department. Our investigation of this department was conducted in a manner consistent with the California Penal Code, this Court's Charge, and the historic role of the Grand Jury – to protect the interests of the citizens of Napa County.

This is the fourth in a series of final reports we will be issuing before our term ends. I would like to acknowledge the hard work and dedication of the Grand Jury which our report reflects. It is a privilege and a pleasure to work with them.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "W. Trautman".

William E. Trautman
Foreperson
2008-2009 Napa County Grand Jury



A Tradition of Stewardship
A Commitment to Service

NAPA COUNTY GRAND JURY

P.O. BOX 5397

NAPA, CALIFORNIA 94581

To the Citizens of Napa County:

The 2008-2009 Napa County Grand Jury is engaged in several comprehensive investigations of various governmental agencies and related matters in Napa County in exercise of its duty under California law. The report, issued with this letter, is the result of our investigation of the Napa County Adult Probation Department which has not been the subject of a Grand Jury investigation for a number of years.

The Adult Probation Department has been restructured to employ Evidence Based Practices in an attempt on the part of the Adult Probation Department to predict recidivism outcomes of probationers, reduce recidivism, and thereby address issues contributing to Napa County Jail overcrowding.

In order to begin to achieve these goals or outcomes, the personnel of the Adult Probation Department have undergone training in the utilization of an instrument of predictability known as "Level of Service / Case Management Inventory," or LS/CMI which is considered to be reliable. LS/CMI covers criminal history, education/employment, family/marital, leisure/ recreation, companions, alcohol/drug problems, procriminal attitude/orientation and antisocial patterns of a probationer. LS/CMI further evaluates personal problems with criminogenic potential, the nature of the offense, prison experience, social, health and mental health issues, and special responsivity factors. Once the Adult Probation Department has determined a criminogenic profile, the probationer can be assessed on a Risk/Need Profile and assigned to a corresponding supervisory group. In general, these groups are segregated into areas of very high, high, medium and low risk of recidivism.

Probation Officers play the dual roles of a law enforcement officer and a social worker. To effectuate a plan to reduce recidivism, the Adult Probation Department has begun to place more emphasis on the social service role. This does not imply that the Adult Probation Department is not enforcing the rules and conditions of probation placed on a probationer by the Court, but rather how that enforcement is implemented.

A major goal is to place maximum efforts where they will do the most good in reducing recidivism. To that end, the policy is to have maximum supervision of all very high risk probationers and to expend resources on an individual probationer where there would be a greater likelihood of success in reducing recidivism. Further, the plan is to have, at least, monthly supervision of medium and high risk probationers and to expend maximum resources on them because those resources will be most productive in reducing recidivism. Low risk probationers need little to no supervision and minimal participation in behavior modification programs.

The Adult Probation Department is enthusiastic about the utilization of Evidence Based Practices which are considered to be cutting edge processes in probation services. At least two to three years of data must be collected by the Department in order to establish normative outcome patterns. Currently, it is examining programs to be used by probationers with the intent these programs must become, or already are, Evidence Based Practices and thereby insure program service is linked to desirable goals.

The Grand Jury has some concerns related to the safety of the physical facilities of the Adult Probation Department and for the safety of Probation Officers performing unannounced searches of probationers' residences. The morale of the Adult Probation Department was found to be acceptable with the following issues: the limited opportunity for advancement, the high rate of personnel turnover and the retirement benefits.

The Grand Jury commends the Board of Supervisors and the Adult Probation Department for:

- Instituting Evidenced Based Practices within the Adult Probation Department with the goal of reducing recidivism
- Modeling a Mental Health Court
- Creating a Community Correction Service Center, staffed by trained non-county personnel, to establish and implement Evidence Based Programs for probationers to reduce recidivism

The Grand Jury also commends the Adult Probation Department for the high degree of dedication shown by the Probation Officers, as they serve in their dual roles.

Napa County Counsel's Office has reviewed this final report on the Napa County Adult Probation Department and the Presiding Judge of the Napa County Superior Court has certified that the report complies with Title 4 of the California Penal Code. The report has also been accepted and filed as a public document by the County Clerk.

Copies of this report are available for your review in the Napa City/County Library and online by following the link to Grand Jury at <http://www.napacourt.com>. It is our pleasure and honor to serve you during the 2008-2009 Grand Jury's tenure. We hope you find our report interesting and informative.

Respectfully submitted,

The 2008-2009 Napa County Grand Jury

NAPA COUNTY ADULT PROBATION DEPARTMENT

SUMMARY

The 2008-2009 Napa County Grand Jury, as a function of its charge to investigate and report to the citizens of Napa County on their local governmental agencies, conducted an investigation of the Napa County Adult Probation Department. This decision was made because the Adult Probation Department has not been reviewed since the appointment six years ago of a new Chief Probation Officer. In addition, the Department has been restructured to employ Evidence Based Practices with the end goal of reducing recidivism. Evidence Based Practices are defined as “A progressive, organizational use of direct, current scientific evidence to guide and inform efficient and effective correctional services.”

Probationers are rated by a Probation Officer in the Court Unit using an Evidence Based Assessment tool to assess the likelihood of the probationer re-offending. The probationers are placed in groups designated as very low, low, medium, high and very high based upon their re-offending rating. This re-offending rating, which is not necessarily correlated to the seriousness of the offense committed, is included in the pre-sentencing report prepared for each offender before formal sentencing. This report is filed with the court by the Adult Probation Department.

Communication and cooperation between Management levels of the District Attorney’s Office and the Probation Department both report that communication and cooperation is acceptable and productive. There is, however, a “disconnect” between the Probation Officers and the Deputy District Attorneys on the issue of victim impact. Deputy District Attorneys indicate that Pre-sentencing reports produced by Probation Officers do not provide sufficient victim impact information to the Court. The Probation Officer does not acquire victim impact information from the District Attorney’s Office for use in the pre-sentencing report. The District Attorney’s Office has no protocol for making victim impact information available to the Probation Officer for use in the pre-sentencing report.

Within the Supervision Unit of the Adult Probation Department, probationers are placed into groups based upon the type of offense committed and the likelihood of re-offending and the amount of supervision required. One or more Probation Officers supervise each group.

An insufficient number of rehabilitation programs are available to the Probation Officers, especially in the area of mental health. Of those rehabilitation programs available, few are Evidence Based programs.

Probation Officers are not armed, but are issued pepper spray and handcuffs. Probation Officers are exposed to potential harm when they conduct an unannounced search of a probationer’s home with the assistance of two Police Officers; and to a lesser degree in “Knock and Talk”

visits to a probationer's home address without police assistance. The Grand Jury noted other safety issues including,

- Placement of furniture in a Probation Officer's office or cubicle that could inhibit egress by the Probation Officer from the office should a probationer become violent;
- An alarm system that is slow to provide assistance to a Probation Officer who activates the alarm; and
- The procedure to wand probationers for weapons does not include a protocol for what the Probation Officer should do if a weapon is detected.

There is a relatively high turnover of Probation Officers due to a lack of upward mobility within the Probation Department. Probation Officers are also seeking to be designated as "safety officers" so they might obtain additional pension and retirement medical benefits which are offered to Probation Officers by neighboring Counties.

The Adult Probation Department is sculpting a Mental Health Court to determine if this type of program would be useful and effective in dealing with mentally ill probationers.

The Criminal Justice Committee and the Board of Supervisors have identified the Probation Department as the appropriate authority to implement and manage the Community Corrections Service Center. This Center would be staffed by trained non-county personnel and would conduct Evidence Based Programs with the goal of reducing probationer recidivism.

The Grand Jury also notes that upon completion of probation, the Adult Probation Department does not inform the probationer of California Penal Code Section 1203.4 concerning the possible dismissal of the probationer's case.

Throughout its investigation of the Adult Probation Department, the Grand Jury witnessed a high degree of dedication shown by the Probation Officers as they serve in dual roles of a peace officer and a social worker.

BACKGROUND

The Napa County Probation Department is an agency operating as part of the Napa County Superior Court with inter-related responsibilities to the Courts and to the Napa community. The Napa County Probation Department is funded by the County of Napa. Probation Officers in the Adult Probation Department have the combined responsibilities to protect the community, serve the court, serve the victim, and provide a range of services to probationers ordered to comply with probation supervision. The mission of the Adult Probation Department is to provide protection to the community through accountability, socialization of offenders and restoration to victims. The present Chief Probation Officer has held this position for six years and has a background of twenty years social service with the Napa County Health and Human Services. The Chief Probation Officer is appointed by the Superior Court and reports to both the Board of Supervisors and the Napa County Superior Court.

The Adult Probation Department has four units, a Clerical Unit headed by a Supervising Law Clerk, a Court Unit and two Supervision Units each headed by a Supervising Probation Officer. The organization of the Adult Probation Department is shown in Appendix A.

The length of probation is either three or five years with twenty probationers presently on five-year probation and approximately 2000 on three year probation. Three-year probation may be reduced to two years and five-year probation may be reduced to three years by order of the Court. The length of the probation period is seldom reduced; in fact, in 2007 only twenty probations were reduced (a small number given the number of yearly probations).

METHODOLOGY

Interviews Conducted:

- Various levels of Probation Officers
- Various levels of personnel in the District Attorney's Office
- Various level of personnel in the office in the Public Defender's Office
- Various Probationers
- Representatives of the Health and Human Services Agency

Documents Reviewed

- Organization chart for the Adult Probation Department
- Four Redacted Presentencing Reports with Associated Court Minute Order
- Description of the intensive supervision unit, October 13, 2006
- Letter re: Probation and Safety, with accompanying references
- List of Probation Officers that who have left since 2006
- Two-page form letter sent to new probationers for first visit with their Probation Officer
- 2007-2008 Marin County Civil Grand Jury Report Probation Officers, Arming for Safety, June 9, 2008
- One page form letter informing the probationer that probation period has ended
- QuickScore™ Form, Level of Service/ Case Management Inventory LS/CMI used for risk assessment
- Jail and Evidence Based Practices Assessment, Napa County, California, report of the Mark Carey Group, October 19, 2007
- Probation Department Budget
- District Attorney Office Budget
- The Carey Group PowerPoint presentation on Evidence Based Practices to Napa County Officials in October 2006
- Case Load Assignments as of October 13, 2008
- Napa County's web site pages dealing with the Probation Department (<http://www.co.napa.ca.us>)

DISCUSSION

Adult Probation Department

In order to alleviate overcrowded conditions at the Napa County Jail, the County is currently considering building a larger facility. This construction would be a considerable cost to the County. In the interim, the Napa County Board of Supervisors, the Napa County Superior Court, the Department of Corrections, the Probation Department, the District Attorney's Office, the Public Defender's Office and the Sheriff's Department all reached a consensus that proactive efforts should be made to reduce recidivism. The current recidivism rate in Napa County is about 50 percent for felonies and 40 percent for misdemeanors. A consultant, hired to address options on how to reduce recidivism within Napa County, recommended implementing rehabilitation and therapy programs utilizing Evidence Based Practices. Evidence Based Practices are defined as "A progressive, organizational use of direct, current scientific evidence to guide and inform efficient and effective correctional services."

For many years social programming and probation services have not been examined in a manner that has allowed for clear, concise outcomes or predictability. Evidence Based Practices is an attempt on the part of the Adult Probation Department to predict recidivism outcomes of probationers, reduce recidivism, and thereby address issues contributing to Napa County Jail overcrowding.

In order to begin to achieve these goals or outcomes, the personnel of the Adult Probation Department have undergone training in the utilization of an instrument of predictability known as "Level of Service / Case Management Inventory," or LS/CMI. The LS/CMI is a "paper and pencil" inventory, which has been validated by independent research and is considered to be reliable. LS/CMI covers criminal history, education/employment, family/marital, leisure/recreation, companions, alcohol/drug problems, procriminal attitude/orientation and antisocial patterns. LS/CMI further evaluates personal problems with criminogenic potential, the nature of the offense, prison experience, social, health and mental health issues, and special responsivity factors. The Adult Probation Department completes the LS/CMI for each probationer. Once the Adult Probation Department has determined a criminogenic profile, the probationer can be assessed on a Risk/Need Profile and assigned to a corresponding supervisory group. In general, these groups are segregated into areas of very high, high, medium and low risk of recidivism.

The Adult Probation Department is enthusiastic about the utilization of Evidence Based Practices which are considered to be cutting edge processes in probation services. At least two to three years of data must be collected by the Department in order to establish normative outcome patterns. Currently the Department is examining programs to be used by probationers with the intent these programs must become, or already are, Evidence Based Practices and thereby insure program service is linked to desirable goals.

Probation Officers play two roles, first as a law enforcement officer, and secondly as a social worker. To effectuate a plan to reduce recidivism, the Adult Probation Department moved from a mainly law enforcement role to a more social service role. This is not meant to imply that Adult Probation Department is not enforcing the rules and conditions of probation placed on a

probationer by the Court, nor is it a question of enforcement, but rather how that enforcement is implemented. One of the major tenets of the consultant's recommendations is to place maximum efforts where it will do the most good in reducing recidivism. To that end the Adult Probation Department has implemented the following policies:

- Instituting a Probation Officer's informal dress code to resemble a business "casual Friday" dress code
- Rating probationers on the likelihood of reoffending into groups of low; medium, high and very high
- Segregating low risk probationers from all other risk probationers
- Providing minimum supervision of low risk probationers
- Providing medium supervision of medium and high risk offenders with identification of programs within and outside of the Adult Probation Department to help the probationer modify conduct to reduce the likelihood of re-offending
- Providing maximum supervision of very high risk probationers making some effort of conduct modification
- Reducing the appearance of law enforcement (e.g., Probation Officers are not armed but presently may carry only handcuffs and pepper spray on their person while in the Adult Probation Department office)
- Instituting cognitive behavior modification classes lead by a Probation Officer for a select group of probationers being supervised by that Probation Officer
- Scheduling meetings between a Probation Officer and a probationer which take on the tone of a helpful inquiry of how the probationer is complying with the terms and conditions of his or hers probation rather than an inquisition looking for reason for revoking probation
- Insuring that not all technical breaches of the terms and conditions of probation necessarily require that probation be revoked
- Insuring that all failed drug tests result in arrest where revocation of probation may or may not be recommended by the Probation Officer who supervises that probationer

Probation Officers are trained in, and aware of, the Evidence Based Practices being incorporated into the Adult Probation Department for the supervision and treatment of probationers to reduce recidivism. Unfortunately, there are few Evidence Based Programs in Napa County to which probationers can be referred. To this end, rehabilitation Evidence Based Programs are being developed within the Adult Probation Department to assist probationers to make cognitive changes in their behavior. A contract has been entered into and funded for the formation of a Community Correction Service Center staffed by trained non-county personnel for the establishment of Evidence Based Programs for use with probationers.

Some probationers have mental health problems which impact their recidivism behavior. The Probation Officers do not have adequate programs or referrals for coping with mental health issues. A Mental Health Court is being developed to demonstrate effectiveness in dealing with mental health problems affecting these probationers. Five probationers identified as having mental health problems will be under the jurisdiction of the model Mental Health Court during the test period.

The Court Unit

Seven Probation Officers in the Court Unit of the Adult Probation Department, who are experienced in the application of determinate sentencing law, aid the Courts by gathering and analyzing information related to adult offenders and preparing an assessment of the risk of re-offending. This information is evaluated and sentencing recommendations are made in a pre-sentencing report. In 2008, six Probation Officers in the Court Unit filed 1456 pre-sentencing reports with the Court. A Court Unit Probation Officer also provides Bail Own Recognizance Reports, Supervised Own Recognizance Reports, Expungments, Diversion Reports and 1203C Post Sentencing Reports. After a defendant has been adjudicated guilty of one or more offenses by either trial or plea bargain, the Court has the option, in some situations, to place the defendant on Summary Probation, which is not monitored by the Adult Probation Department. In all other situations the case is then referred to the Court Unit for the preparation of a pre-sentencing report to be returned to the Court in twenty court days. The case is then assigned to an experienced Probation Officer who does an independent investigation of the background of the defendant. The investigation includes interviewing the defendant during which time a defendant's statement is taken and an Evidence Based risk assessment (Level of Service/ Case Management Inventory LS/CMI) is administered to determine the defendant's re-offending risk rating.

The Probation Officer also sends a letter to the victim of the crime committed by the defendant together with a victim impact statement to be completed and returned to the Probation Department detailing the effects the crime had on them. In most cases, the Probation Officer will follow up with the victim if the victim has failed to respond in two weeks. Not all victims respond to this request. Management levels of the District Attorney's Office and the Probation Department both report that communication and cooperation is acceptable and productive. There is, however, a "disconnect" between the Probation Officers and the Deputy District Attorneys on the issue of victim impact. Pre-sentencing reports produced by Probation Officers are not valued by the Deputy District Attorneys as providing sufficient victim information to the Court. The Probation Officer does not take steps to acquire victim impact information from the District Attorney's Office for use in the pre-sentencing report. The District Attorney's Office has no protocol for making victim impact information available to the Probation Officer for use in the pre-sentencing report.

An investigation also includes obtaining the defendant's past criminal history (Record of Arrest and Prosecution (RAP) sheet), facts about the offense from police reports, interviews with the police and, at times, factual data from the District Attorney's Office. The Probation Officer is also knowledgeable of the terms of the plea agreement if applicable or an indication of what prison sentence is likely. When the defendant has a plea agreement which includes prison time, an abbreviated pre-sentencing report is completed to assist the State Department of Corrections. When the defendant is guilty of substance abuse (drug or alcohol) the procedure is to refer the defendant for an assessment by the Napa County Health and Human Services Department which generates and submits a report to the designated Probation Officer within three days.

After the investigation is completed, a pre-sentencing report is prepared by the Probation Officer. The pre-sentencing report includes:

- The conditions of the plea where applicable

- A statement of the facts
- The defendant's prior record
- The defendant's statement
- The victim's statement where applicable and available
- Any fines/restitution
- A social history
- Any substance abuse including prior treatment and recommendations for treatment,
- Collateral factors such as reference letters
- Defendant's conduct on probation
- Rules of Court assessment of criteria for probation, criteria for circumstances in aggravation and mitigation and criteria affecting concurrent or consecutive sentencing
- LS/CMI evaluation results
- The Probation Officer's overall evaluation
- A sentence recommendation (prison, jail, probation with jail, probation without jail)

The pre-sentencing report is reviewed by the Court Unit Supervising Probation Officer before it is forwarded to the Court, the District Attorney and the Defense Counsel. Normally this takes place within five Court days before the sentencing hearing. The Probation Officer generating the pre-sentencing report is not required to be present at the sentencing hearing. In the past a Duty Probation Officer would be present at the sentencing hearing and would have the files of the defendants to be sentenced at that hearing in case the Court should have any questions. However, this practice was terminated at the request of the Court. At present, if the Court has questions regarding the pre-sentencing report, the Probation Office is called and either the Probation Officer generating the report or the Duty Probation Officer will obtain the file, go to the Courthouse and answer the Court's questions. If time permits, some Probation Officers do attend the sentencing hearing on cases for which the Probation Officer has prepared the pre-sentencing report.

It was reported that currently the Deputy District Attorneys find the recommended sentences in the pre-sentencing reports too lenient and the Deputy Defense Attorneys find the recommended sentences in the pre-sentencing reports to be punitive.

The Supervision Unit

At the present time, Probation Officers in the Supervision Unit of the Adult Probation Department supervise approximately 2043 probationers, 1016 misdemeanor defendants and 1027 felony defendants. Within the Supervision Unit, probationers are grouped in accordance with the level of risk of re-offending as determined by the risk assessment performed in the Court Unit and the nature of the offense. The Adult Probation Department has established several specialized caseload categories that include selected domestic abuse, drug/alcohol offenders, gang violence offenders, sex offenders, victim restitution, placement and supervision of offenders ordered to complete residential treatment and/or Drug Court and drug offenders ordered by the Court to participate in the Proposition 36/START Program. After the Court orders probation for a defendant, the case is referred to this Unit. Probation begins the day it is ordered by the Court even if the defendant is sentenced to jail time. Therefore, a defendant can be sentenced to jail and be on probation at the same time.

The Supervision Unit is divided into two supervision sections. Each section is headed by a Supervisor Probation Officer who answers directly to the Chief Probation Officer. The Probation Officer assigned to a defendant will receive a copy of the pre-sentencing report and a copy of the Court order with the terms and conditions of probation. A letter is sent to the probationer stating an appointment date with the assigned Probation Officer. During this initial meeting, the Probation Officer reviews with the probationer the terms and conditions of probation and establishes a clear understanding of what is expected of the probationer while on probation. The letter contains a copy of California Penal Code Section 1203.4 which states:

Any violation of the above order will be considered sufficient for your return for further action by the Court. Your probation will expire on _____, unless extended or modified by the Court. Provided you have fulfilled the condition of your probation (and by law you are entitled), you may have your plea or conviction set aside, enter a plea of not guilty, and have the case dismissed. This motion must be made by you in person, by your attorney, or by the Probation Officer to the Court originally granting your probation. The effect of this proceeding is to release you from all penalties and disabilities resulting from the offense or crime of which you had been convicted. Except, that in any subsequent prosecution for any other offense, the conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the case dismissed.

When a probationer completes probation the Adult Probation Department sends a letter to the probationer simply stating that probation has been completed. The letter does not include California Penal Code Section 1203.4 concerning the possible dismissal of the case.

Very High Risk Probationers

A tenet of Evidence Based Practices for probation is to have maximum supervision of all very high risk probationers and to expend resources on an individual probationer where it appears that in doing so there would be the likelihood of some success in reducing recidivism.

One Probation Officer is assigned to supervise the current group of fifty-two probationers. The offenses involved are domestic violence, drugs, gang offenses, weapons, and assaults. One third of this caseload exhibits mental health problems for which the Probation Officer lacks the programs to deal with this issue. The Probation Officer meets with these very high risk probationers once or twice a week or, in some cases, every other week. It is expected that 80 percent of these offenders will violate the terms and conditions of their probation. The commission of a new offense is a violation of probation. The Probation Officer works closely with the Deputy District Attorney and generally will recommend prison for such a violation. For technical violations such as missed appointments or failing a drug test for the use of marijuana, the Probation Officer will terminate the probation with a recommendation to the Court for further rehabilitation, if applicable, and jail time of a minimum of thirty days.

The Probation Officer is permitted to do an unannounced search of the probationer's home. However, there must be reasonable cause to do such a search. A Police Officer is permitted to do an unannounced search based on the terms of probation and without reasonable cause. Reasonable cause can be any violation of probation. The unarmed Probation Officer is

accompanied by two Police Officers who secure the home prior to the Probation Officer performing the search. The number of unannounced searches performed is determined by time availability.

For this group of probationers, success is maintaining probation without a violation.

Medium Risk/High Risk Probationers

Another tenet of Evidence Based Practices for probation is to expend resources on the medium and high risk probationers because those resources will be most productive in reducing recidivism.

Currently fourteen Probation Officers supervise 1400 to 1500 probationers who fall into the classification of Medium Risk/High Risk probationers. Eighty percent of these probationers are involved with substance abuse (drug or alcohol). Historically about 20 percent of these probationers will violate the terms and conditions of probation resulting in the probationer being required to participate in further programs and/or jail time of a minimum of thirty days.

Two Probation Officers supervise 250 to 260 probationers on Proposition 36 probation. Under this probation, first time drug offenders who successfully complete a drug rehabilitation program will have their charges dismissed. However, if the probationer is later arrested for the use of drugs, the Court will be made aware of the prior arrest for drugs and probation. These offenders meet with the Probation Officer once a month and are subject to “Knock and Talk” visits by Probation Officers to verify their home address. The Probation Officers hold cognitive behavior modification classes for a select group of probationers under their supervision, generally ten at a time.

Three Probation Officers supervise about 400 medium/high risk probationers found guilty of domestic violence. The Department’s goal is to increase accountability and community/victim protection by providing some of the unique services and treatment these individuals require. The probationers are required to attend a fifty-two week anger management program and report to their Probation Officer once a month. They are subject to “Knock and Talk” visits by two unarmed Probation Officers to verify their home address. These Probation Officers hold cognitive behavior modification classes for a select group of probationers under their supervision, generally ten at a time.

One Probation Officer supervises about 120 high risk probationers, sixty-five to sixty-seven of whom were arrested for sex offenses. Not all sex offenders are on Megan’s List of Sex Offenders due to the plea agreement which reduces the charge to a charge that does not require such a listing. Sex offenders are found to be very compliant and often score as low risk offenders on the LS/CMI risk evaluation. Regardless of the score on the risk evaluation or the final charge stated by the Court order, all these probationers are deemed to be sex offenders and at high risk of re-offending for probation matters. Sex offenders are seen by the Probation Officer once or twice a month in person, with a full review of their progress quarterly, and a polygraph examination every six months. Sex offenders are subject to unannounced searches of their home or business by the Probation Officer accompanied by two Police Officers. Sex offenders are ordered by the Court to a treatment program at a cost of \$140 per month to be paid by the probationer. There is no treatment program for low-income probationers. The Probation

Officer meets with the medical staff of the treatment program once a month to obtain an update on the probationers' progress in the program. The medical staff immediately notifies the Probation Officer of any concerns, which arise in relation to any probationer within the program. As part of probation, the probationer must agree to waive the medical/patient privilege.

The non-sex offenders meet once a month with the Probation Officer either in person or by letter. If any probationer fails a drug test for heroin, methanol or cocaine they are arrested and probation is revoked with a recommendation for jail time. The Probation Officer holds cognitive behavior modification classes for a select group of probationers under his/her supervision, generally ten at a time.

One Probation Officer supervises up to forty-six high risk drug-addicted probationers assigned to Drug Court and helps supervise Proposition 36 probationers. Drug Court is the end of the line for serious drug offenders and requires a high level of supervision by the Probation Officer. Drug Court convenes once a week and typically reviews twenty cases. Drug Court is made up of a Probation Officer, a Judge, a Duty District Attorney, a law enforcement officer and a medical person from the treatment program. A probationer is expected to complete a residency program or an out-patient drug program. The drug program costs the probationer \$900. Drug Court has three phases: Phase I, probationer meets with the Drug Court once a week; Phase II, probationer meets with the Drug Court biweekly; and Phase III, probationer meets with the Drug Court once a month. The criteria for moving between phases are the probationer's abstinence from drugs and a demonstration of the ability to hold employment. Ideally a probationer is in Drug Court for twelve to eighteen months but some probationers have been there for as long as two years. Probation continues after a probationer has completed Drug Court. The Probation Officer holds cognitive behavior modification classes for a select group of probationers under his/her supervision, generally ten at a time.

One Probation Officer supervises seventy-nine high risk drug probationers who are currently in substance abuse residential, awaiting beds in a program, or coming out of a program. The Probation Department contracts with Project 90 for eight beds. The Probation Officer locates other probationer-paid residence programs for the probationer to enter. The Probation Officer holds cognitive behavior modification classes for a select group of probationers under his/her supervision, generally ten at a time.

One Probation Officer supervises about 113 probationers, including seventy-two high risk probationers found guilty of gang related offenses, and forty-one other medium/high risk cases. The Probation Officer can do an unannounced search of all high risk probationers' homes. There must be reasonable cause for such a search. Reasonable cause can be any violation of probation. The unarmed Probation Officer is accompanied by two Police Officers who secure the home prior to the Probation Officer performing the search. These searches have uncovered weapons (guns and knives) which are a violation of probation. All violations of probation found during the search result in the probationer being arrested and taken into custody. The Probation Officer holds cognitive behavior modification classes for a select group of probationers under his/her supervision, generally ten at a time.

One Probation Officer supervises about one hundred high risk probationers who do not fit into the any of the above groupings of probationers as well as about fourteen medium risk probationers required to do restitution. These probationers meet with the Probation Officer once a month in person or by letter. The Probation Officer holds cognitive behavior modification classes for a select group of probationers under his/her supervision, generally ten at a time.

Four Probation Officers supervise the remaining medium/high risk probationers who do not fit into any of the above groupings of probationers. These probationers meet with the Probation Officer once a month in person or by letter. The Probation Officers hold cognitive behavior modification classes for a select group of probationers under their supervision, generally ten at a time.

Low Risk Probationers

A tenet of Evidence Based Practices for probation is to segregate low risk probationers from medium, high and very high risk probationers to avoid medium, high and very high risk probationers from adversely influencing the low risk probationers. Low risk probationers need little to no supervision and minimal participation in behavior modification programs.

One Probation Officer supervises 535 low risk probationers of which 76 percent are required to report in once a month. These probationers are Driving Under the Influence (DUI) convictions, drug use convictions and some felonies and are usually first-time offenders. The Adult Probation Department has contracted for a probationer voice recognition telephone reporting system, *OffenderLink*, for tracking these probationers. Each probationer is to call into the system once a month and the system notifies the Probation Officer of any failure of a probationer to report on time, or for an arrest in this, or any other county in California. The Probation Officer has little contact with the probationer. When a probationer fails to call into the system for thirty days, a follow up letter is sent informing the probationer to call into the system and if no there is no response for sixty days, the probationer is deemed missing. Where the Court has ordered the probationer to enter a rehabilitation program, a document of enrollment must be filed with the Probation Officer. When necessary, the Probation Officer can revoke probation by completing a form and sending it to the Court. This form includes a sentencing recommendation of 30 days jail time for second violation and sixty days in jail for a third or greater violation. The recommended sentencing is made with the concurrence of the Supervising Probation Officer based upon the severity of the violation. The revocation of probation form is always reviewed by the Supervisor Probation Officer before the form is sent to the Court.

Safety Issues

Building Security

The Adult Probation Department is located on the second floor of the Hall of Justice. The Hall of Justice also houses the jail. Entrance into the Hall of Justice is not monitored for any weapons. The Adult Probation Department's position is that cost of monitoring the entrance into the Hall of Justice with a manned metal detector and x-ray system is cost-prohibitive. Further, if such funding were available, the Adult Probation Department would rather use available funds to employ an additional Probation Officer.

The Adult Probation Department is located within a locked area with no unannounced access to that area. The rear door to the locked area is at times left open, allowing unannounced entrance into at least some parts of the otherwise locked area.

Office Security

A probationer is searched for weapons before being allowed into the Adult Probation Department's offices. The Probation Officer uses a hand held metal detector/wand to search the probationer. Incidences have been reported where a probationer has hidden a knife within the waiting area of the Adult Probation Department to escape detection. There is no set procedure for what a Probation Officer is to do if a weapon is found during the search. It has been left up to the Probation Officer how to address the situation.

Probation Officers are not armed but they can carry handcuffs and pepper spray within the office. Some Probation Officers are concerned the physical layout of their office or cubicle is unsafe because it places the probationer between the Probation Officer and the doorway of the office or cubicle, thereby limiting the Probation Officer's ability to exit the office or cubicle if the probationer becomes angry or violent. If a Probation Officer feels threatened by a probationer while the probationer is in the office or cubicle, the Probation Officer can activate an alarm system to request assistance. When this system is activated, an audible alarm sounds within the Department, the location of the source of the alarm appears on the front desk and an announcement is made on the address system within the Department as to who needs assistance. Other Probation Officers are expected to respond to the alarm. This system is criticized as being slow, and the address system cannot be heard in some offices if the door is closed.

Probationers are sometimes arrested while in the Department for violating probation. It is the policy of the Adult Probation Department to have such arrest performed by more than one Probation Officer. The probationer is handcuffed and transported to the booking office of the Jail via an elevator connecting the Adult Probation Department and the Jail Booking Department. The elevator may not be immediately available to the Probation Officers for transporting the probationer. There is no holding cell or room in which an arrested probationer can be held in the interim. There is however, a lockable room next to the elevator which is being considered for use as a secure holding area.

Off Site Security

"Knock and Talk" is a procedure done by the Adult Probation Department to confirm a probationer's stated residence. This procedure is carried out by two Probation Officers who are not accompanied by Police Officers. These Probation Officers carry pepper spray and handcuffs, but are otherwise unarmed. No entry is made into the probationer's residence. Some Probation Officers, willing to do unannounced searches, are reluctant to do "Knock and Talk" as they deem it unsafe.

Unannounced searches of a probationer's residence are done by the Adult Probation Department based on reasonable cause to ascertain if the probationer is conforming to the terms and conditions of probation. These searches are done by one Probation Officer and two armed Police Officers. The Probation Officer carries pepper spray and handcuffs and wears a protective vest, but is otherwise unarmed. The Police Officers enter the residence first and secure the residence

by having all persons in the residence assemble in one room. The Probation Officer then performs the search. Occasionally Probation Officers have found a person hiding in closets or in bathrooms after the residence has been secured by the Police Officers. In addition, weapons, such as guns and knives, have been found during these searches. Where a probation violation has been found, the probationer is arrested and taken into custody. Some Probation Officers are reluctant to perform these searches.

Arming of Probation Officers

It is the policy of the Adult Probation Department that Probation Officers do not carry firearms while on duty, either in or out of the office. The reasons stated for this policy are:

- There is no immediate evidence that firearms are needed since even pepper spray has never been used on a probationer
- The increase cost of training and qualifying Probation Officers to carry and use such weapons
- The increase exposure of Napa County for events involving the use of weapons by Probation Officers
- The use of two armed Police Officers to accompany the Probation Officer on unannounced searches is deemed sufficient protection for the Probation Officer
- There is an established Safety Committee to address these concerns and Probation Officers have been trained in techniques dealing with hostile or combative people

It is the common opinion of Probation Officers that not all of them need to be armed. Further, if any Probation Officers are to be armed, it should be those performing unannounced searches. It is believed by some Probation Officers that a Probation Officer should have the verbal skills to defuse a situation while others believe that arming is necessary. Probation Officers have noted that when they are accompanied by two armed Police Officers; the Police Officers protect each others' back; however, the Probation Officer is not accompanied by one of the Police Officers during the actual search, so no one is protecting the Probation Officer's back. Thus, a Probation Officer needs to be able to defend him or herself and not depend on others in time of crises.

The Adult Probation Department has stated the arming of Probation Officers performing unannounced searches would be reconsidered if the two Police Officers were no longer available for accompanying the Probation Officer on an unannounced search of a probationer's residence.

Retention and Morale Issues

In the course of the Grand Jury investigation of the Adult Probation Department, the topic of staff morale was a recurring subject. The morale of the Adult Probation Department was found to be acceptable with the followings issues: the Department size with its limited opportunity for advancement, the high rate of personnel turnover and the retirement benefits.

Further, some Probation Officers believe they should be classified as "Safety Officers," thereby obtaining a similar pension and medical plans as public safety officials in other jurisdictions. At this time, a Probation Officer in the Napa County Adult Probation Department has retirement benefits of 2½ percent at age fifty-five and Napa County Employee's retirement medical benefits, which do not cover a retiree's family. Some Probation Officers desire the increase in

retirement medical benefits more than the increase in the retirement income benefit. The Probation Department in an attempt to equalize these differences and to improve retention pays Probation Officers a 5 percent Premium Pay.

There is a belief among Probation Officers that Napa County Adult Probation Department serves as a training ground for Probation Officers. Some Probation Officers have left to work in Probation Departments in different counties and others have left for careers in law enforcement. In an eighteen month period, between 2007 and 2008, ten Probation Officers and one Management Officer have left the Probation Department, most of who were from the Adult Probation Department. All but two have left for positions that provided retirement benefits of 3 percent at fifty and safety employee's retirement medical benefits which cover not only the retiree, but also the retiree's family. Further, the Adult Probation Department has indicated a desire to add three new Probation Officers and one new Training Officer so as to equalize the case load on the existing Probation Officers.

A Probation Officer II will achieve the highest salary step in five years. In addition, the number of Probation Officer III positions is limited to two per Supervising Probation Officer, further limiting upward mobility (See Appendix A: Organization Chart). At present, no plans exist to increase the opportunity for upward mobility by promoting additional Probation Officers from Probation Officer II to Probation Officer III who would not provide coverage for the Supervising Probation Officer. Recently, there was a promotion to a newly created position of Assistant Chief Probation Officer, which will allow for additional internal advancements in the future. The Adult Probation Department has decided to train "in house" to fill management positions within the Probation Department.

The Grand Jury noted a high degree of dedication shown by the Probation Officers as they serve in dual roles, that of a peace officer, and a social worker. While some of the preceding issues may not seem to be directly related to morale, they may adversely impact overall job satisfaction. In order to alleviate ambiguity and allow greater harmony within the Department, the administration needs to address these issues.

FINDINGS

The 2008-2009 Grand Jury finds that:

1. The Adult Probation Department is incorporating Evidence Based Practices in dealing with persons placed on Probation in an effort to reduce recidivism.
2. Probationers are rated by a Probation Officer in the Court Unit using an Evidence Based Assessment tool to assess the likelihood of re-offending. The probationers are placed in risk groups designated as very low, low, medium, high and very high.
3. The re-offending rating, which is not necessarily correlated to the seriousness of the offense committed, is included in the pre-sentencing report prepared for the Court by the Court Unit of the Probation Department.
4. The degree of supervision by the Supervision Unit of the Adult Probation Department is a function of the re-offending rating.

5. Probationers are placed into groups based on the type of offense committed and their offending rating. Each group is covered by one or more Probation Officers.
6. There are insufficient rehabilitation programs available to the Probation Officers for use with probationers. Of those rehabilitation programs that are available, few are Evidenced Based Programs.
7. The number of programs available for the mentally ill probationer is inadequate.
8. Upon completion of probation, the Adult Probation Department does not inform the probationer of California Penal Code Section 1203.4 concerning the possible dismissal of the probationer's case.
9. Probation Officers, who are not armed except for pepper spray and handcuffs, can be exposed to potential harm when they perform unannounced search of a probationer's home and to a lesser degree to a "Knock and Talk" visit to a probationer's listed home address.
10. The placement of furniture in a Probation Officer's office or cubicle could be a safety hazard if a probationer becomes violent.
11. The alarm system is slow to provide assistance to the Probation Officer who activates the alarm.
12. There is no secure holding area in the Adult Probation Department for holding probationers awaiting transfer for the Adult Probation Department to the Booking Department of the County Jail.
13. The procedure for a Probation Officer to "wand" probationers outside the Adult Probation Department's office does not include a protocol when weapons are detected on the probationer.
14. The entrance to the Hall of Justice is not monitored and therefore is not secure.
15. The relatively high turnover of Probation Officers is due to the lack of upward mobility within the Department and the attractiveness of "safety officers" status with the additional pension and retirement medical benefits offered to Probation Officers by neighboring counties.
16. Probation Officers are dedicated to their tasks as they serve a dual role of a peace officer and a social worker.
17. The Adult Probation Department is modeling a Mental Health Court.
18. The Adult Probation Department has been determined to be the appropriate authority to implement and manage the Community Corrections Service Center, staffed by trained non-county personnel to establish and implement Evidence Based Programs to reduce recidivism by probationers.
19. There is a "disconnect" between the Probation Officers and the Deputy District Attorneys on the issue of victim impact. Pre-sentencing reports produced by Probation Officers are not valued by the Deputy District Attorneys as providing sufficient victim impact information to the Court. The Probation Officer does not acquire victim impact information from the District Attorney's office for use in the pre-sentencing report. The District Attorney's Office has no protocol for making victim impact information available to the Probation Officer for use in the pre-sentencing report.
20. The Adult Probation Department has indicated a desire to add three new Probation Officers and one new Training Officer so as to equalize the case load on the existing probation officers.

RECOMMENDATIONS

The 2008-2009 Grand Jury recommends that:

1. Napa County continue to fund a Mental Health Court.
2. Adult Probation Department identify and increase the number of Evidence Based Programs, either “in house” or by outside contractors, to be used by the Probation Officers to assist probationers to achieve cognitive changes so as to reduce recidivism.
3. The security within the Adult Probation Department, inclusive of creating a secure holding area for holding arrested probationers awaiting transport to the Jail Booking Department, be increased.
4. The lack of opportunities for upward mobility within the Probation Department be addressed to reduce turnover.
5. The Adult Probation Staff be expanded by three Probation Officers and one Training Officer.
6. A protocol be established between the District Attorney’s Office and the Court Unit of the Adult Probation Department for providing District Attorney’s victim impact data to the Probation Officer for use in a pre-sentencing report while maintaining the independence of investigations done separately by the two offices.
7. The Adult Probation Department’s letter to the probationer informing them probation has been completed include a recital of California Penal Code Section 1203.4 concerning the possible dismissal of the probationer’s case.

COMMENDATION

The Board of Supervisors and the Probation Department are commended for:

- Instituting Evidenced Based Practices within the Adult Probation Department with the goal of reducing recidivism
- Modeling a Mental Health Court
- Creating a Community Correction Service Center, staffed by trained non-county personnel, to establish and implement Evidence Based Programs for probationers to reduce recidivism

The Adult Probation Department is commended for the high degree of dedication shown by the Probation Officers, as they serve in dual roles of peace officer and social worker.

REQUEST FOR RESPONSES

The Napa County Board of Supervisors is requested to respond to Recommendations 1-5.

The Napa County Probation Department is requested to respond to all recommendations.

The Napa County District Attorney is requested to respond to Recommendation 6.

GLOSSARY

DUI Driving Under the Influence
LS/CMI Level of Service/ Case Management Inventory

APPENDIX

Organization Chart for the Adult Probation Department Illustrating Probation Officers and Assignments

