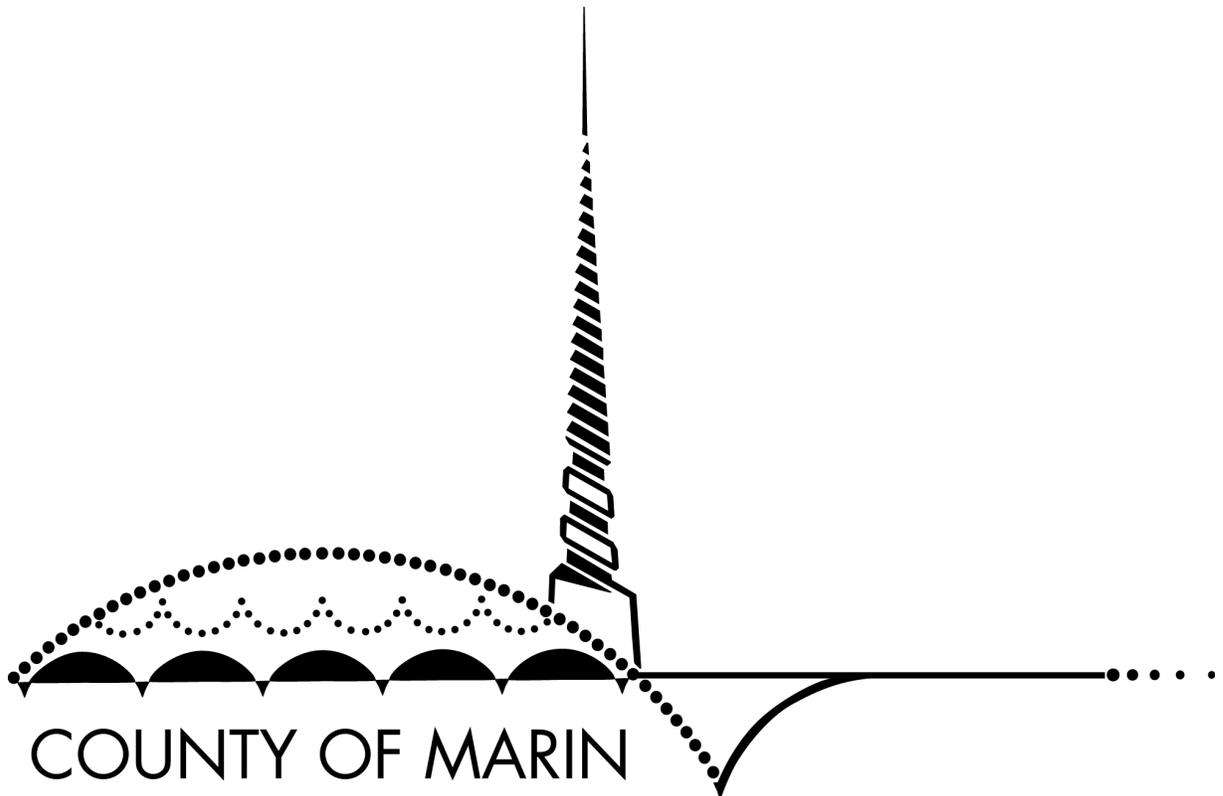
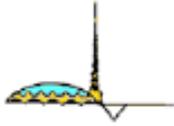


2013/2014 MARIN COUNTY CIVIL GRAND JURY

Jail Checkup: What's the Price of a Clean Bill of Health?

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JAIL CHECKUP: WHAT'S THE PRICE OF A CLEAN BILL OF HEALTH?

SUMMARY

Recent changes at the Marin County Jail prompted the Marin County Civil Grand Jury to take another look at jail conditions. The California Public Safety Realignment Act of 2011, Assembly Bill 109 (referred to as AB109) now requires county jails to accept responsibility for selected inmates previously sent to state prisons.¹ Some of these inmates will be serving terms far longer than those for which the Jail was designed. Before AB109, stays in Marin's Jail were generally under a year; now they may be considerably longer.

Significant challenges for the Marin County Jail (Jail) are to maintain high quality affordable health care services, to improve the care of mentally ill inmates, and to provide for transitional care services upon an inmate's release.

The Grand Jury found that the cost of jail medical services is unnecessarily high, compared to other Bay Area Jails, and continues to increase. To this end, we recommend exploring the provision of medical services by a high quality correctional medical contractor, finding an alternative means of administering emergency psychiatric medication, and enrolling all eligible inmates in Medi-Cal as expanded by the federal Affordable Care Act.²

BACKGROUND

Increase in Inmates with Mental Illness

During the course of our investigation, the Grand Jury had occasion to interview members of the Sheriff's Department, the County Department of Health and Human Services, and both the psychiatric and medical staff of the Jail. All had the same comment, that the number of inmates who were mentally ill had been increasing, but few had specific views on how much of an increase had occurred or over what period of time.

¹ The new inmates, previously sent to state prisons but now sentenced to county jails, include felons who are nonviolent, non-serious, and nonsexual (the 3 nons) and parole violators, regardless of the seriousness of the original conviction for which they are paroled.

² The Patient Protection and Affordable Care Act, sometimes also referred to as Obamacare, signed into law on March 23, 2010, Public Law 111-148, <http://www.gpo.gov/fdsys/pkg/PLAW-111publ148/html/PLAW-111publ148.htm>. Changes to Medicaid (called Medi-Cal in California) are found in Title II – Role of Public Programs, Sections 2001 et seq.

A report by the nonprofit Treatment Advocacy Center, a national organization, surveyed data and reached this distressing conclusion:

In historical perspective, we have returned to the early nineteenth century, when mentally ill persons filled our jails and prisons. At that time, a reform movement, sparked by Dorothea Dix, led to a more humane treatment of mentally ill persons. For over a hundred years, mentally ill individuals were treated in hospitals. We have now returned to the conditions of the 1840s by putting large numbers of mentally ill persons back into jails and prisons.³

California began emptying its mental hospitals in the 1950's under Governor Goodwin Knight, continued doing so through the 1960's under Governor Edmund G. "Pat" Brown, and finished the job in the administration of Governor Ronald Reagan, who closed most of the mental hospitals completely.⁴

In California, by the 1970's, the emptying of the mental hospitals had resulted in increases in the number of mentally ill in the jails and prisons.⁵ Estimates of the current percentage vary, but data suggests the number continues to increase. According to Health and Human Services staff assigned to the Jail, about a quarter of inmates at the Marin County Jail take prescribed psychiatric medications, but this is not considered a complete measure of mental illness. No comprehensive data are available for the number of mentally ill inmates at the Jail.

While attempts proceed to contain the growing population of mentally ill in the jails with mental health courts like Marin's STAR Court⁶ and other restorative justice approaches, the Marin County Jail and other penal institutions must be prepared to continue to care for mentally ill inmates in their custody.

Currently, the only treatment for mentally ill inmates consists of medication. No resources are available to provide individual or group therapy.

Substance Use Among Inmates

Unfortunately, many inmates who are diagnosed with mental illness have also used illegal drugs. We were unable to obtain figures on the number of inmates in the Marin County Jail who use, misuse or are addicted to drugs or alcohol, but staff members are aware that drugs and alcohol often play a role in incarceration. The term *abuse* is no longer used, in recognition, we were told, of the continuum from use to addiction.

³ Torrey, E. Fuller, M.D., et al., "More Mentally Ill Persons Are in Prisons and Jails Than Hospitals: A Survey," Treatment Advocacy Center, May 2010, p. 1,

http://www.treatmentadvocacycenter.org/storage/documents/final_jails_v_hospitals_study.pdf

⁴ Torrey, "More Mentally Ill Persons Are in Prisons and Jails Than Hospitals," p. 2.

⁵ Ibid.

⁶ The 2012-2013 Marin County Civil Grand Jury described this effort to remove mentally ill offenders from the Jail population in *STAR Court: A Restorative Justice Success Story*, <http://www.marincounty.org/depts/gj/reports-and-responses/reports-responses/2012-13/star-court>

When substance addiction and mental illness come together, an individual having both conditions is referred to as having a dual diagnosis.⁷ Though substance addiction may be treatable, dual diagnosis complicates the picture. We were told that dual diagnosis is common in the Marin County Jail—more the rule than the exception.

Each of these conditions adds to the burden the Jail is charged with on behalf of the community.

One off-the-cuff estimate provided by a mental health staff member was that 80 percent of Marin inmates come in with substance issues. This estimate is consistent with publicly available data. We found one national report alleging that alcohol and drugs were implicated in all kinds of crimes:

Substance misuse and addiction are overwhelming factors in all types of crime, not just alcohol and drug law violations. Thirty-seven percent of federal, state and local prison and jail inmates in 2006 were serving time for committing a violent crime as their controlling offense; of these inmates, 77.5 percent were substance involved. Those serving time for property crimes comprise 19.2 percent of the inmate population; 83.4 percent were substance involved. Those whose controlling offense was a supervision violation, public order offense, immigration offense or weapon offense comprise 13.3 percent of the inmate population; 76.9 percent were substance involved.⁸

According to the same report, in 2006, substance-involved inmates made up 84.8 percent of all incarcerated offenders in federal, state and local prisons and jails.⁹

APPROACH

The Grand Jury read statutes, regulations and case law governing jails and prisons, documents from the County and Sheriff's Department, reports from Marin County Grand Juries and others, court records, reports from government and nonprofit organizations, newspaper articles, web sites, and other materials detailed in the Bibliography.

We interviewed members of the Sheriff's Department, members of the Marin County Department of Health and Human Services, custody and other staff at the Jail, a staff member of the Facilities Standards Operations of the California Board of State and Community Corrections, inmates, probation officers, lawyers who have contact with the Jail, and two members of the Marin County Board of Supervisors.

⁷ National Alliance on Mental Illness, *Dual Diagnosis: Substance Abuse and Mental Illness*, January 2013, http://www.nami.org/Content/NavigationMenu/Inform_Yourself/About_Mental_Illness/By_Illness/Dual_Diagnosis_Substance_Abuse_and_Mental_Illness.htm

⁸ The National Center on Addiction and Substance Abuse of Columbia University, *Behind Bars II: Substance Abuse and America's Prison Population*, February 2010, p. 2, <http://www.casacolumbia.org/addiction-research/reports/substance-abuse-prison-system-2010>

⁹ *Behind Bars II*, p. 10.

We toured the Marin County Jail twice, the second time to concentrate on specific issues. We toured jails in two other Bay Area counties and interviewed representatives of two additional California county jails by telephone.

DISCUSSION

Medical Services Exceeding State Standards

The Marin County Jail maintains high standards for medical care to inmates. In contrast, the minimum level of care set by regulation in the California Code of Regulations, Title 15, Crime Prevention and Corrections is low. Article 8, beginning with Section 3350, governs medical and dental services. Article 9, beginning with Section 3360, governs mental health services. Regulations are not statutes enacted by a legislature, but they have the force of law. They are generally authorized by statute and written by an administrative agency with input from the public.¹⁰

Jails are only required to provide medically necessary services. Section 3350 (a) provides, in part:

The department shall only provide medical services for inmates, which are based on medical necessity and supported by outcome data as effective medical care.

This is not a high standard. Similarly, Section 3360 (a) provides, in part:

The department will provide a broad range of mental health services to inmates and parolees by assessing the needs of its population and developing specialized programs of mental health care, to the extent resources are available for this purpose.

The Marin County Jail has chosen to meet a higher standard and to measure that higher level by seeking accreditation for its medical, dental and mental health services. Accreditation would mean the Jail would need to meet standards for these services higher than those minimum standards mandated by the state. It would also carry with it additional levels of review. Members of the Sheriff's Department and Health and Human Services (HHS) are working with the Institute for Medical Quality (IMQ) in San Francisco and have met many of IMQ's benchmarks. As we prepare this report, we anticipate an announcement of accreditation.

By meeting the IMQ benchmarks, the Marin County Jail is better able to evaluate the adequacy of both current medical services administered by county employees as well as those provided by outside correctional medical providers, should an alternate provider be sought. These outside providers are often used by other California county jails for the cost savings they appear to offer.

¹⁰ Regulations, Law and Legal Definition, USLegal, Inc., <http://definitions.uslegal.com/r/regulations/>

Increasing Cost of Health Care

Marin County Department of Health and Human Services (HHS) has requested an expansion in hours of service to meet the mental health needs of inmates. This is in addition to the 50 percent increase in hours provided at the Jail in the last year or so. Part of AB109's goal is to provide funding to address these needs, and some of the additional cost has been paid by AB109 funds provided by the state. Indeed, the increase in mental health services appears to have been prompted as much by the availability of additional funds as by previously unrecognized needs.

The cost of all medical care at the Jail, including mental health and dental care is steadily increasing. In this respect, perhaps the Jail is not different from the community at large.

This is not the first time the Grand Jury has visited this subject. The 2004-2005 Marin County Civil Grand Jury reviewed the cost of providing health care services at the Jail. In its report the Grand Jury found that Marin County spent considerably more on health care services than other counties in the Bay Area with the exception of San Francisco.¹¹ This difference in costs is one area upon which we focused attention.

At the time of the 2004-2005 report, Marin County was spending \$11,955 annually per inmate on health care, according to sources cited in that report. Today, Marin County spends more than \$15,000 annually per inmate for health care services. By contrast, a number of other Bay Area counties spend closer to \$8,000 per inmate annually. County sources told us the savings would be accomplished by contracting out medical services to experienced correctional medical providers. Marin provides these services primarily with County employees.

Like the 2004-2005 Grand Jury, we urge the County to explore an arrangement for contracting out health care services at the Jail. While it would not be appropriate for the Grand Jury to dictate the terms of an arrangement that needs to be negotiated and subjected to a bid process, we are confident that a satisfactory solution can be found that would protect the livelihood of current County employees while meeting the needs of the Jail. The transition from public employees to contractors has been made successfully in 30 jails around California,¹² and it can be done in Marin as well.

Involuntary Psychiatric Medication

Some very specific needs of the mentally ill incarcerated in our Jail must be addressed, whether or not a contractual arrangement is struck for outside medical services. Among the most challenging issues facing Jail administrators is the need to make some

¹¹ Marin County Civil Grand Jury, 2004-2005, *Marin County Jail Healthcare: "Plush" & Expensive*, <http://www.marincounty.org/depts/gj/reports-and-responses/reports-responses/2004-05/jail-healthcare>

¹² Outsourcing to correctional medical providers in California began in Monterey County in 1984. California Forensic Medical Group Incorporated, web site, About CFMG, <http://cfmg.com/about/>. This company alone has served 28 counties in California.

accommodation for mentally ill inmates who are candidates for involuntary psychiatric medication.

The mentally ill, whether in custody or not, have the right to refuse medication. Without their informed consent, involuntary medication is available only in circumstances in which the patient is a danger to himself or others or in which the patient is severely disabled as a result of the mental illness.¹³ For inmates sentenced to a county jail, these requirements are set forth in California Penal Code § 2603.¹⁴

At the Marin County Jail, inmates in need of involuntary psychiatric medication are sent to the psychiatric unit of the Santa Clara County Jail in San Jose. No similar facility exists in Marin County. Marin has a contractual arrangement with Santa Clara in which Santa Clara charges Marin County \$1500/day for an inmate admission, including custody and treatment. One inmate incurred a bill of \$56,000. Transport to San Jose is Marin County's obligation and expense.

In the event the inmate needs continued involuntary medication beyond an immediate emergency, court approval is required. A hearing is conducted (pursuant to a *Riese* petition¹⁵) in which the treating physician or physicians must testify. The current practice for Marin County inmates is to have the hearing in Santa Clara County, where the inmate has been treated. If the court confirms the need for continued involuntary medication, a temporary conservatorship is established. Since the conservatorship is temporary, some inmates discontinue medication when the conservatorship ends.

The objective of the hospitalization and involuntary treatment is to stabilize the inmate's condition. Some inmates then agree to take medication voluntarily. In other instances the discontinuance of involuntary medication may result in repeated emergencies requiring renewal of involuntary medication. Multiple trips back and forth from Marin to Santa Clara are not unheard of.

The disruption caused by needing to take the inmate to San Jose while still acutely psychotic takes up time and energy for the custody staff. It also delays administration of the treatment needed. Sometimes the Santa Clara facility has no bed available for a Marin County inmate, further delaying treatment and potential resolution, possibly for a week or more. During that time the inmate can remain in an agitated state, without medication and without any reasonable alternative. Santa Clara has no obligation to provide treatment to a Marin inmate; the obligation is Marin County's.

¹³ Treatment Advocacy Center, "Key Issue: '[A]bsent a judicial determination of incompetence, antipsychotic drugs cannot be administered to involuntarily committed mental patients in non-emergency situations without their informed consent,'" *Eliminating Barriers to the Treatment of Mental Illness*, undated, <http://treatmentadvocacycenter.org/component/content/article/348>, discussing *Riese v. St. Mary's Hospital and Medical Center*, 259 Cal. Rptr. 669, 774 P.2d 698, 751 P.3d 893 (1989).

¹⁴ The statute, Penal Code § 2603, does not apply to inmates who have not yet been sentenced.

¹⁵ Named for *Riese v. St. Mary's Hospital and Medical Center*, cited above.

Four counties besides Marin use the Santa Clara facility for involuntary psychiatric treatment: Contra Costa, San Mateo, Sonoma, and Alameda. With AB109 in place, inmate populations in some of these counties and in Santa Clara County have increased, putting additional pressure on the facility in Santa Clara.

Were a local facility able to administer psychiatric medications on a one-time basis in an emergency, relief could be available much sooner. Sometimes, the mental health staff told us, one injection is sufficient. A single injection of appropriate medication could calm the inmate and permit a staff member to have a discussion with the inmate, leading to voluntary acceptance of medication. In other instances, involving drugs, one emergency injection could see the inmate through detoxification. Permitting emergency medication locally might not eliminate trips to San Jose, but it is likely to reduce their number.

In Marin County, emergency psychiatric services are provided by the Psychiatric Emergency Services of the Marin County HHS.¹⁶ County personnel could provide emergency psychiatric services to inmates, just as they do for members of the community who are not incarcerated. Services provided to inmates by Psychiatric Emergency Services should be equivalent to the services provided to other members of the community.

Other counties who contract with the Santa Clara facility for inpatient psychiatric treatment sometimes use emergency psychiatric services in their communities when a bed at the Santa Clara facility is not immediately available. The inmate is not admitted to the local facility but is treated as an outpatient. We recommend that HHS's Psychiatric Emergency Services, in cooperation with the Marin County Jail, develop guidelines and procedures for emergency psychiatric treatment of inmates and begin to provide this treatment locally.

Expanded Medi-Cal

Counties have been generally responsible for providing health care to inmates in their custody. Insurance does not cover inmates in custody except in limited circumstances.

However, the Affordable Care Act, known as Obamacare, has expanded Medicaid (Medi-Cal in California) and is available in some instances to inmates. Marin has begun the process of enrolling eligible inmates. Instructions for enrolling appear on the County web site.¹⁷ The effort could save the County a modest amount of money when procedures are covered. More importantly, it would provide eligible inmates with a transition to health care coverage upon their release from the Jail. The Grand Jury applauds this effort.

¹⁶ The facility that provides these services is located in a building adjacent to Marin General Hospital but is not part of the hospital.

¹⁷ Californians for Safety and Justice, *Enrolling County Jail and Probation Populations in Health Coverage, A Toolkit for Practitioners*, April 2013, https://www.marinhhs.org/sites/default/files/files/servicepages/2013_08/8g_medi-calenrollment_toolkit_-_probation_and_jail_populations_april_2013.pdf

FINDINGS

- F1. The cost of health care in the Marin County Jail has increased and is likely to continue to increase if the services are continued at the current level and funded as currently provided.
- F2. Providing involuntary psychiatric medication by the Marin County Psychiatric Emergency Service on a one-time emergency basis (rather than at the Santa Clara Jail after transport) is likely to reduce costs and to improve patient care in some instances.
- F3. Enrolling eligible inmates in expanded Medi-Cal under the Affordable Care Act would save the County a modest amount of money while the inmates are incarcerated and would improve the transition to outside health care when the inmate is released.

RECOMMENDATIONS

- R1. Explore the option of contracting for medical, mental health and dental services at the Jail with a high quality correctional provider, rather than providing these services with County employees.
- R2. Develop procedures for providing involuntary psychiatric medication on a one-time emergency basis in Marin County, rather than sending the inmate to the Santa Clara Jail for this service.
- R3. Enroll, or continue to enroll, eligible inmates in expanded Medi-Cal under the Affordable Care Act. Provide assistance with the application process for those who are unable to accomplish it for themselves.

REQUEST FOR RESPONSES

Pursuant to Penal code section 933.05, the Grand Jury requests responses as follows:

From the following governing body:

- Board of Supervisors

The governing body indicated above should be aware that the comment or response of the governing body must be conducted in accordance with Penal Code section 933 (c) and subject to the notice, agenda and open meeting requirements of the Brown Act.

From the following individuals:

- Marin County Sheriff

The grand jury invites a response from the following:

- The Director of Marin County Department of Health and Human Services

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Please Note: Some of the links listed in the footnotes and bibliography may not be active and might require copying the information into a search engine. At the time this report was prepared, the information was available at the sites listed.

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.