

# MEMO

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OFFICE OF THE DISTRICT ATTORNEY  
AND PUBLIC ADMINISTRATOR  
TODD SPITZER



January 8, 2020

TO: Hon. Lisa Bartlett, Chairwoman  
Hon. Michelle Steel, Vice Chair  
Hon. Andrew Do, Supervisor  
Hon. Donald Wagner, Supervisor  
Hon. Doug Chaffee, Supervisor

FROM: Todd Spitzer, District Attorney

SUBJECT: UCI AB 109 Recidivism Study; Agenda Item No: 15

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## Summary

The request pending before the Board of Supervisors (BOS) is to modify the contract entered into with the Regents of the University of California Irvine (UCI) for a study of “recidivism” in Orange County related to the AB109 population. The contract currently requires UCI to use both the state and local definitions of “recidivism” for their evaluation. The pending request would modify the contract to require only the use of the state definition for purposes of this study.

For reasons stated below, the District Attorney’s Office opposes this request.

## Background

The original contract between the County and UCI required UCI to evaluate the impact of AB109 on local recidivism based on both the Board of State and Community Corrections (BSCC) definition and the locally adopted definition of “recidivism” approved by the BOS. The intent of the requirement to use the local definition of “recidivism” was a recognition by the Board that use of the BSCC definition alone would not accurately reflect the true scope of the recidivism in the AB109 population. The BSCC’s narrow definition fails to capture any conduct other than a new criminal conviction within a certain time period and fails to account for any post-conviction conduct such as probation violations or new law violations that are adjudicated without requiring a conviction (such as certain diversion program cases), that the Board believed should be considered in measuring recidivism.

The Board of State and Community Corrections (BSCC) currently uses the following definition of recidivism:

*“Recidivism is defined as a conviction of a new crime committed within three years of release from custody or committed with three years of placement on supervision from a previous criminal conviction.”*

The Orange County Board of Supervisors adopted a definition of recidivism for local purposes:

*“Recidivism is defined as a conviction of a new felony or misdemeanor; or a sustained parole or probation violation based on new criminal offense; or any lawful arrest that led to the filing of a law, probation or parole violation based on new criminal offense. Recidivism shall include any of the foregoing offenses committed within three years of release from custody, three years of placement on supervision, or three years after termination of supervision.”*

The difference in scope of conduct that would be captured by the local versus the state definitions is obvious. By engaging UCI to evaluate the data *under both definitions*, the Board was attempting to produce a report that would allow a comparison of results of using the two different definitions and though that contrast, provide a clearer picture of the true rate of recidivism in the AB109 population in Orange County. The BOS has since modified the local definition of recidivism but the District Attorney’s Office believes this change should not substantially affect the ability to gather and evaluate the data for this study.

After a period of planning, analysis and meetings with the various agencies in possession of the relevant data, UCI produced a memo dated September 2, 2019, entitled “Data Required for Local Recidivism Measures”. In it, UCI describes how it had broken the local definition of recidivism into six components:

- 1) Convicted of a new felony or misdemeanor;
- 2) Sustained parole violation based on a new criminal offense;
- 3) Sustained probation violation based on a new criminal offense;
- 4) Lawful arrest that led to a filing of a law violation;
- 5) Lawful arrest that led to a filing of a probation violation based on a new criminal offense;
- 6) Lawful arrest that led to a filing of a parole violation based on a new criminal offense;

The memo asserts that after consulting with the various agencies, components 1 and 4 (conviction of a new felony or misdemeanor or lawful arrest that led to a filing of a new law violation) **could**

be measured with available data. The memo further states that the information needed for prong 3 (sustained probation violation based on a new criminal offense) could only be measured for Post Community Supervision (PCS) cases and not Mandatory Supervision (MS) or Formal Probation cases. The memo concludes that the data for the remaining components (2, 5 & 6) cannot be reliably obtained from other sources with the main issue being the sources' failure to differentiate whether the source of the violation was a new crime or a "technical" in nature.

Presumably, as a result of this perceived inability to comply with the totality of the local definition of recidivism, UCI has now requested to modify the contract for with the County to delete the requirement for use of the local definition and confine the study to the use of the BSCC definition.

### **Analysis**

The goal of obtaining a realistic and fair evaluation of the rate of recidivism in the Orange County AB109 population would not be best served by using only the BSCC definition. By completely excising any version of the local, broader definition of recidivism as requested by UCI, the Board would essentially be letting "perfect be the enemy of good".

The District Attorney's Office believes that using the same data points of the local definition but providing instruction to UCI to restrict the scope of each of the various component categories to violations that have resulted in court appearances for defendants in the AB109 population, the local definition can be substantially used and evaluated. The process may include the labor intensive hand sorting and counting of some documents to distinguish "technical" versus "new law" violations, but the District Attorney's Office believes that with effort, a reasonable assessment of the data related to the local definition can be achieved.

By their own admission, UCI can, without further restriction on the definition, gather evidence from prongs 1 and 4 (a new conviction and a lawful arrest that leads to a new law filing). At a minimum, if the Board is inclined to modify its contract and instruction to UCI, the Board should request data related to prongs 1 and 4 be included and analyzed in its evaluation. Retreating to an evaluation of prong 1 alone, which is the BSCC definition, is unwarranted, misleading and not reflective of the true rate of AB109 recidivism in Orange County.

### **Conclusion**

The District Attorney's Office believes the goal of using a local, broader definition of recidivism in a funded study of recidivism in the Orange County AB109 population is both worthy and achievable. The District Attorney urges the Board to reject UCI's request and direct them as follows:

1. Begin collecting and evaluating the data UCI has indicated is already available, namely, using prongs 1 and 4 of the local recidivism definition as described by UCI in their letter dated September 2, 2019.
2. Meet with stakeholders to develop a plan for collecting and evaluating data for the remaining prongs (2, 3, 5 & 6 as defined by UCI in the letter dated September 2, 2019)

with the modification of limiting the scope of the evaluation to those violations that have resulted in court appearances.