



County of Orange

County Executive Office

August 10, 2021

Honorable Erick L. Larsh
Presiding Judge of the Superior Court of California
700 Civic Center Drive West
Santa Ana, CA 92701

Subject: Response to Grand Jury Report, "Orange County Sheriff's Department Evidence Booking Issue - Has it Been Resolved?"

Dear Judge Larsh:

Per your request, and in accordance with Penal Code 933, please find the County of Orange response to the subject report as approved by the Board of Supervisors. The respondents are the Orange County Board of Supervisors and the County Executive Office.

If you have any questions, please contact Elizabeth Guillen-Merchant of the County Executive Office at 714-834-6836.

Sincerely,

Digitally signed by Frank Kim
DN: cn=Frank Kim, o=County of
Orange, ou=CEO,
email=frank.kim@ocgov.com,
c=US
Date: 2021.08.11 13:25:57 -07'00'

Frank Kim
County Executive Officer

Enclosures

cc: Orange County Grand Jury
Lilly Simmering, Deputy County Executive Officer
Elizabeth Guillen-Merchant, Director, Performance Management and Policy



Responses to Findings and Recommendations 2020-21
Grand Jury Report:

“Orange County Sheriff’s Department Evidence Booking Issue – Has it Been Resolved?”

SUMMARY RESPONSE STATEMENT:

On May 24, 2021, the Grand Jury released a report entitled “Orange County Sheriff’s Department Evidence Booking Issue – Has it Been Resolved?” This report directed responses to findings and recommendations to the Orange County Board of Supervisors (Board), Orange County Sheriff’s Department (OCSD), Orange County District Attorney (OCDA), and Orange County Public Defender (OCPD). OCSD and OCDA will be filing their responses separately as outlined in the Penal Code. The response below is the collective response of the Board and OCPD.

FINDINGS AND RESPONSES:

- F1. The OCDA and OCPD question whether current OCSD policies and procedures related to evidence booking and reporting are being followed.

Response: **Agrees with the finding** for reasons explained below:

The Sheriff’s Department uses an automated evidence booking system known as Remedy which records when an item of evidence was collected, who booked it and when it was booked.

According to the Grand Jury’s report, “All items are booked separately into the Remedy system. Each item is packaged with a securely attached evidence tag and bar code label identifying the item. The Evidence Case Items Report (Evidence List) is generated as a PDF file, and later attached to the department report.” (P. 6, referencing Figure 5.) The Grand Jury goes on to report that “[t]he case packet OCDA receives from OCSD now includes the Remedy Case Items Report.” Put another way, the Grand Jury determined that the Remedy report is printed out by the Sheriff, attached to the crime report (referred to as a department report) and provided to the District Attorney.

However, for reasons unknown to the Public Defender, the Remedy report is usually not included in the initial packet of discovery that is provided to deputy public defenders by the District Attorney upon appointment to a case. Instead, deputy public defenders must separately request Remedy reports from prosecutors in order to obtain them. When clients are eager to obtain immediate settlements or are presented with credit-for-time-served offers by prosecutors or judicial officers, attorneys and their clients are often faced with making decisions without access to these critical reports.

It is unclear to the Public Defender whether attaching the Remedy report to the department report is a Sheriff's policy (as suggested on page 7) which is not being followed or whether the issue lies with District Attorney who ultimately must provide discovery to the defense.

Nevertheless, when the Remedy reports are provided, the Public Defender is generally seeing that evidence collected is now being booked in a timely manner. However, the Public Defender does not touch every case where an arrest is made and evidence is collected. Although the Public Defender handles most criminal cases, a significant number of clients, especially in misdemeanor cases, plead guilty at their arraignment without an attorney. Additionally, some criminal cases are handled by privately retained counsel. Importantly, in a many of the cases identified by the Sheriff involving evidence that was never booked or booked late, no criminal prosecution was ever initiated. In these three scenarios—cases involving self-represented defendants, defendants represented by private counsel, and cases where arrests were made, evidence was collected but no case was filed—the Public Defender does not have access to the Remedy reports and cannot speak to whether policies and procedures related to evidence booking and reporting are being followed.

- F2. An audit of OCSD department reports submitted from March 2018 forward has not been conducted to confirm that current OCSD policies and procedures regarding evidence booking and reporting are being followed.

Response: Agrees with Finding

- F4. Lack of system integration between Remedy and FBR necessitates duplicate data entry and reliance on manual oversight to reconcile the DR# and evidence list between the two systems.

Response: Defers to OCSD.

- F5. A tour of the Property/Evidence Central Booking Facility is no longer included during deputy training. This limits their understanding of the overall chain of custody process.

Response: Defers to OCSD.

RECOMMENDATIONS AND RESPONSES:

- R1. Conduct an independent third-party audit of OCSD department reports submitted from March 2018 forward, to be performed by either the Orange County Office on Independent Review or the Orange County Internal Auditor within 180 days from the date of publication of this report. (F1, F2)

Response: The recommendation requires further analysis.

The Orange County Office of Independent Review (OIR) is currently conducting an investigation of instances prior to March 2018 in which evidence gathered by the Orange County Sheriff's Department (OCSD) was not booked, despite department reports that attested to proper logging and treatment of said evidence. The review will assess OCSD policies and practices that were in place during and after evidence booking issues were uncovered, with the goal of determining the causes of this past systemic failure and to assess the corrective actions that followed. The OIR will then make any necessary recommendations to help ensure that such issues don't reoccur and, barring that, are identified as quickly as possible by OCSD, the Orange County Office of the District Attorney, and the Office of the Public Defender.

The OIR's review does not currently include an audit of OCSD department reports submitted from March 2018 forward. If the OIR's on-going work shows that such an audit is necessary, then it will incorporate one into its work so that it can inform its work, conclusions, and related recommendations.

- R3. Move to a platform that will support the integration of data maintained in the CAD, Remedy, and FBR system within two years from the date of publication of this report. (F4)

Response: Defers to OCSD.