



Orange County Grand Jury

2014-2015

Final Report

The Orange County Court House,
Santa Ana, Cal.





ORANGE COUNTY GRAND JURY

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July 1, 2015

Honorable Richard M. King
Supervising Judge, Central Felony Panel
Superior Court of California, County of Orange
700 Civic Center Drive West
Santa Ana, CA 92701

Dear Judge King:

On behalf of the 2014-2015 Orange County Grand Jury, I am pleased to present this Final Report of the Civil Investigations to this Court and to the citizens of Orange County. The Final Report is the result of the dedicated work performed by the nineteen members of the Orange County Grand Jury. Our Grand Jury members volunteered one year of their life for public service in order to help improve the local government of Orange County on behalf of its citizens. The Grand Jury applied their extensive and diversified experience to this challenge. These civil investigations were conducted with the highest level of professionalism and integrity.

The Final Report of the Civil Investigations is the compilation of seventeen individual reports. These individual reports addressed a wide range of local government issues within the County, the cities in the County and other organizations within the County, such as Special Districts and Joint Powers Agencies. The Grand Jury completed its mandate to inquire into the jails within the County to assure the humane treatment of those being held. Each full report is contained in this Final Report document.

In addition to conducting the civil investigations on behalf of the citizens of Orange County, the Grand Jury supported the judicial system. This support was provided by assisting the Orange County District Attorney's Office with Criminal Indictments and Criminal Investigations. The work of the Grand Jury provided a citizen's review and judgment on the quality of the accusation evidence provided by the District Attorney's Office before rendering an indictment. The Criminal Investigations provided the ability of the Grand Jury to hear witnesses under oath regarding high profile cases such as officer involved shootings and political official misconduct. Finally, the Grand Jury participated in the Coroner's hearings into the death of inmates to represent the public regarding the potential of conflict of interest since Orange County has a Sheriff-Coroner joint office.

Honorable Richard M. King
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It was my honor to have been given the opportunity to serve as the Foreman of this year's Grand Jury by the Court. It was my pleasure to be part of this team of dedicated citizens who worked together with commitment and perseverance to fulfill their duty. I appreciate the support of all of these Grand Jury Members in working cohesively and constructively to perform these important functions of the Grand Jury.

In addition, we appreciate the support and assistance provided by the following professionals in contributed to the accomplishments of the 2014-2015 Grand Jury:

- Judge Richard M. King, Supervising Judge of the Central Felony Panel for the Orange County Superior Court
- Judge Charles Margines, Assistant Presiding Judge of the Orange County Superior Court
- Sharon Durbin, Deputy County Counsel assigned to the Grand Jury with the assistance of Jacqueline Guzman
- Brock Zimmon, Deputy District Attorney, liaison to the Grand Jury
- John Moohr, President of the Orange County Grand Jurors' Association
- Theda Kaelin, Grand Jury Coordinator and Administrator with the assistance of Sandra Lopez.

The 2014-2015 Grand Jury is proud of its accomplishments in service to the citizens of Orange County. We look forward to seeing the results.

Sincerely,



Paul S. Borzick, Foreman
2014-2015 Orange County Grand Jury

Grand Jury



2014 – 2015 ORANGE COUNTY GRAND JURY

Top Row from Left to Right: Maxine Marcus, Terry Belanger, Neil McCaffery, Paul Borzcik, Tom McCabe, Ted Oglesby

Middle Row from Left to Right: Nindy Mahal, Bill Lycett, Saboohi Currim, Rich Newman, Johnnie Hitt, Mike Ernandes

Bottom Row from Left to Right: David Derby, Mary Laub, Richard Gayer, Sam Torres, Robert Bretón, Burnie Dunlap, Dennis Chen



2014 – 2015 ORANGE COUNTY GRAND JURY

<i>Foreperson</i>	Paul Borzcik
<i>Foreperson Pro-Tem</i>	Neil McCaffery
<i>Secretary</i>	Terry Belanger
<i>Evidence Recorder</i>	Maxine Marcus
<i>Sergeant-at-Arms</i>	Tom McCabe
<i>Parliamentarian</i>	Robert Bretón
<i>Historian/IT Coordinator</i>	David Derby
<i>Social Secretary</i>	Sam Torres

Standing Committees

Cities

Terry Belanger (Chairman), Richard Gayer (Vice-Chairman), Saboohi Currim (Secretary), Burnie Dunlap, Mike Ernandes, Nindy Mahal

County

Richard Gayer (Chairman), Mike Ernandes (Vice-Chairman), Bill Lycett (Secretary), Terry Belanger, Dennis Chen, Neil McCaffery

Criminal Justice

Sam Torres (Chairman), Ted Oglesby (Vice-Chairman), Robert Bretón (Secretary), David Derby, Nindy Mahal, Maxine Marcus,

Environment and Transportation

Mary Laub (Chairman), Saboohi Currim (Vice-Chairman), Johnnie Hitt (Secretary), Burnie Dunlap, Tom McCabe, Rich Newman

Human Services

Dennis Chen (Chairman), Sam Torres (Vice-Chairman), Rich Newman (Secretary), Johnnie Hitt, Maxine Marcus, Neil McCaffery

Special Issues

Robert Bretón (Chairman), David Derby (Vice-Chairman), Mary Laub (Secretary), Bill Lycett, Tom McCabe, Ted Oglesby

Continuity and Editorial

David Derby (Chairman), Tom McCabe (Vice-Chairman), Rich Newman (Secretary), Terry Belanger, Robert Bretón, Dennis Chen, Mike Ernandes, Richard Gayer, Mary Laub, Neil McCaffery, Nindy Mahal, Ted Oglesby

Promotion and Orientation

Burnie Dunlap (Chairman), Johnnie Hitt (Vice-Chairman), Maxine Marcus (Secretary), Saboohi Currim, Mike Ernandes, Mary Laub, Bill Lycett, Neil McCaffery, Sam Torres

Members

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GRAND JURY 2014-2015

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EXECUTIVE SUMMARY

Given the series of droughts in California affecting both the Sierra Nevada water supply and Orange County's ground water supply, the 2014-2015 Grand Jury inventoried the volume of treated wastewater currently discharged into the ocean that could be recycled for beneficial use. Orange County has a long history of working to recycle treated wastewater; however, the County still discharges 147 million gallons per day of wastewater into the ocean (Table 1). This precious water has the potential to be reused or recycled (replacing imported water) for irrigation and in some cases for drinking water. The majority of the treated water costs less to produce than the cost of imported water by 43.5% (Table 2).

The Santa Ana River Basin water is a blend of "free" water (treated wastewater from Riverside and San Bernardino counties, rainfall water, and water runoff) with non-"free" water (recycled Orange County wastewater and imported water). The Grand Jury found that the blending of "free" water with expensive imported water and recycled water resulted in groundwater costing 58% less than imported water (Table 2). The County has wastewater available to recycle that would be cheaper than buying imported water during these years of continuing drought conditions.

BACKGROUND

Southern California is a semi-desert region, where the historical average rainfall is 12.8 inches a year (*State of Water*, 2013). In 2013, there were 3.6 inches of rainfall in Southern California. Rainfall in 2014 was only 4.7 inches (*State of Water*, 2013). If 2015 continues to have a shortage of rainfall, the amount of water retrieved from certain sources may need to be reduced or alternatives created. Water availability in Orange County (OC) depends on a diversified water supply portfolio. OC water supply comes from local and imported sources. Local water sources in OC include a mix of groundwater and recycled wastewater. The Metropolitan Water District of Orange County indicates that 45% of OC's water is imported (*State of Water*, 2013). The Metropolitan Water District of Southern California (MET) supplies imported water from the Colorado River and from the northern Sierra Nevada Mountains (*State of Water*, 2013). Many water distribution and wastewater recycling terms used in this report can be found in the Appendix.

As a result of the recent and drastic decreases in rainfall, water levels and availability of these local sources are quickly falling. When rainfall is below average, local water sources experience different impacts.

Groundwater comes from the local Santa Ana River groundwater basin (the Basin). This local source is always available, but the amount that can be extracted without adverse consequences is largely dependent on the annual rainfall received. The less rainfall, the less groundwater is available for extraction.

Recycled water is a relatively stable source because the amount of available recycled water remains fairly constant. When there is less rainfall, there is less groundwater, which causes more of a demand for putting water back into the Basin to resupply the ground water source. Groundwater recovery is the means by which

groundwater is kept at an acceptable level. The water storage is adversely affected because less rainfall results in less water to store. OC water is typically stored underground in the Santa Ana River Basin or in above ground catch basins, lakes, or ponds. Water storage is more limited in the southern portions of OC than in the northern and central regions. The storage is drawn down to critical levels when the rainfall is too low to replenish it.

Annual snowfall and rainfall also affect the two imported water sources. The northern Sierra Nevada Mountains provide water to OC from the snow accumulated during the winter months. The Colorado River Aqueduct System is one of the most dependable sources but it also has limitations. The Colorado River upstream water sources are also adversely affected by below- average rainfall. Even though it is less affected, the reliability of this source could also be reduced if the drought continues for years to come. Some areas in the southern part of the county depend as much as 95% on imported water for their potable water needs (*State of Water*, 2013).

OC is extremely fortunate to have the Basin and the Groundwater Replenishment System (GRS). The Basin and the GRS make OC less vulnerable to drought compared to other California communities. The Basin is the most cost effective source of water because most of the storage, some of the purification, and most of the replenishment are done by nature with very little human intervention. Again, rainfall does affect how much water can be pumped out of the Basin without replenishment. The GRS recycles wastewater and injects it into the Basin using various methods.

Since recycled water is a local source of water, it is the one part of the system that can be improved and provide economic savings. Recycled water is wastewater that has been treated to remove solids and impurities. The resulting water can be further processed and used to create potable water or used for sustainable landscape irrigation. This irrigation water is called “purple pipe” water.

REASON FOR THE STUDY

Given the fact that California is facing a serious, extended drought, the guaranteed supply of imported water and local groundwater is very vulnerable. The primary purpose of this study was to compare the cost of recycling more water with the cost of buying imported water. The Grand Jury needed to research each wastewater processor to determine the volume of wastewater that might be available for recycling. Based on the possible availability of more wastewater to recycle, what plans does Orange County have to do more recycling of this precious resource rather than discharging it into the ocean?

METHODOLOGY

The Grand Jury gathered information for this report from interviews, site visits, district production reports, and research. On-site interviews were conducted at the Orange County Sanitation District (OCSD), the Orange County Water District (OCWD), the Irvine Ranch Water District, and the South OC Wastewater Authority. The Grand Jury conducted telephone interviews with the remaining water districts. Each interview was with the most senior executive, often followed up with an interview with the person

in charge of production. Production data and information were submitted to the Grand Jury by fax or email. Imported water rates came from the Municipal Water District of Orange County (Municipal, 2014).

INVESTIGATION AND ANALYSIS

OC water supply comes from local water sources and imported water sources. Local water sources in OC include a mix of groundwater and recycled wastewater. These local sources provide about one-half of OC’s water. The other half is imported and supplied to OC by the Metropolitan Water District of Southern California from the Colorado River and from the northern Sierra Nevada Mountains. Assuming the drought continues, OC will have to recycle more wastewater or buy more imported water, which may be much more expensive if all sources are adversely affected by the drought. An analysis of all the data shows that recycling more wastewater is less expensive and more dependable.

The Grand Jury obtained all of the production data from the agencies and analyzed and determined the amount of wastewater volumes and costs. A summary of results are provided in the tables below, with details presented in the following paragraphs.

Table 1: Wastewater Volume

District/Authority	WW Volume In		WW Volume Out		
	Total In (mgpd)	(%)	Ocean (mgpd)	Purple Pipe (mgpd)	Potable (mgpd)
El Toro Water District (ETWD)	3.7	1.4%	3.3	0.4	
Irvine Ranch Water District (IRWD)	21.9	8.4%	1.7	20.2	
Metropolitan Water District of SoCal (MET)	0	0.0%			
Orange County Sanitation District (OCSD) *, **	198.0	75.6%	121.0		
Orange County Water District (OCWD) ***				7	70
City of San Clemente (SC)	4.0	1.5%	3.0	1.0	
Santa Margarita Water District (SMWD)	11.0	4.2%	3.2	7.8	
South OC Wastewater Authority (SOCWA)	22.7	8.7%	14.7	8	
Trabuco Canyon Water District (TCWD)	0.6	0.2%		0.6	
TOTAL	261.9	100%	146.9	45.0	70

Notes:

mgpd = millions of gallons per day

* OCSD's Total In (198mgpd) = OCSD Plant 1 (96mgpd) + OCSD Plant 2 (102mgpd)

** OCSD's Total In (198mgpd) = OCSD ocean discharge (121mgpd) + OCWD purple pipe (7mgpd) + OCWD potable (70mgpd)

*** OCWD has 92mgpd (15mgpd + 7mgpd + 70mgpd) that is already accounted for in OCSD's throughput, including 15mgpd returned to OCSD for Ocean discharge

Table 2: Water Costs (\$/mg)

IRWD Purple Pipe	\$1,653	Cost to treat to purple pipe standards
OCSD Ocean Discharge	\$1,926	Cost to treat for ocean discharge
OCWD Groundwater	\$1,083	Cost of Santa Ana River Basin water
OCWD Purple Pipe	\$1,503	Cost to treat to purple pipe standards
OCWD Potable	\$1,468	Cost to treat to potable standards
SMWD Ocean Discharge	\$1,103	Cost to treat for ocean discharge
SMWD Purple Pipe	\$1,488	Cost to treat to purple pipe standards
SOCWA Ocean Discharge	\$2,655	Cost to treat for ocean discharge
SOCWA Purple Pipe	\$3,326	Cost to treat to purple pipe standards
MET Wholesale	\$2,601	Cost of imported water

North & Central Orange County Wastewater Processing

OC Sanitation District

OC Sanitation District (OCSD) receives and processes the wastewater for all of the cities and unincorporated land in north and central OC, which represents 75.6% of all of OC's wastewater. Last year it processed an average of 198 million gallons per day (mgpd) of wastewater. The OCSD's treatment of wastewater results in a water product that meets federal water safety and state water quality standards for ocean discharge. OCSD also sends treated wastewater to the OC Water District (OCWD).

OC Water District

OCWD manages the Santa Ana River Basin Aquifer, which supplies groundwater for most of the cities and unincorporated areas in north and central OC. The Aquifer water comes from (1) rainfall captured in catch basins along the Santa Ana River, (2) river water flowing from San Bernardino and Riverside, (3) treated wastewater from outside of OC, (4) imported water, (5) recycled wastewater, and (6) a small amount of incidental runoff. OCWD receives 92 mgpd of recycled wastewater from OCSD and then further treats it for two valuable uses: irrigation (purple pipe water), or potable water (drinking water). The amount recovered from this processing or recycling is 7 mgpd of purple pipe water, 70 mgpd of potable water for replenishing the basin aquifer, and 15 mgpd as a byproduct of the treatment process. The majority of this byproduct is returned to OCSD for ocean discharge. OCWD is currently in the process of increasing their recycled potable water capacity from 70 mgpd to 100 mgpd. The capital cost of the project is \$142 million. The Grand Jury computed the amount of additional potable water this project could produce over 30 years and amortized the capital costs over the same period to find that recycled water would still cost far less than imported water.

South OC Wastewater Processing

South OC wastewater is processed by the El Toro Water District, the City of San Clemente, the Santa Margarita Water District, the South OC Wastewater Authority, and the Trabuco Water District. These entities processed an average of 42 mgpd last year, or 16% of OC’s daily wastewater volume. From those 42 mgpd, they produced 17.2 mgpd of purple pipe water and discharged the remainder into the ocean.

Irvine Ranch Water District

The Irvine Ranch Water District (IRWD) processes 21.9 mgpd of wastewater. From those 21.9 mgpd, it produced 20.2 mgpd of purple pipe water and 1.7 mgpd of byproduct. IRWD is unique because in addition to using purple pipe water for landscape irrigation, it also uses it for industrial processes and toilet flushing via dual plumbing systems.

Costs and Measurements

The Grand Jury reviewed the various costs of imported water, recycled water, and groundwater. Since all wastewater must be treated before it can be discharged into the ocean, that cost is considered fixed and, while it is noted in Table 2, it is not used in this study. Water agencies and wastewater processors sometimes use different measuring nomenclature. This study uses one common measurement of million gallons (mg). Some production reports used Acre-Feet (AF). One AF equals 325,851 gallons.

FINDINGS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are submitted to the Presiding Judge of the Superior Court.

Based on its investigation of Wastewater Processing in Orange County, the 2014-2015 Orange County Grand Jury has arrived at eight principal findings, as follows:

- F.1.** The Orange County Sanitation District processes an average of 198 million gallons per day of wastewater and sends 121 million gallons per day of secondary treated wastewater to the ocean.
- F.2.** The Orange County Water District receives an average of 92 million gallons per day of treated wastewater from Orange County Sanitation District and recycles 70 million gallons per day of water treated to potable water standards that is then returned to the groundwater basin aquifers.
- F.3.** From the 92 million gallons per day from Orange County Sanitation District the Orange County Water District recycles 7 million gallons per day of water treated to plant irrigation standards.
- F.4.** The Irvine Ranch Water District processes 21.9 million gallons per day of wastewater and recycles 20.2 million gallons per day for purple pipe use.

- F.5.** The South OC Wastewater Authority (SOCWA) processes 22.7 million gallons per day of wastewater, treats 8 million gallons per day to purple pipe standards, and sends 14.7 million gallons per day to the ocean.
- F.6.** The El Toro Water District, the City of San Clemente, the Santa Margarita Water District and the Trabuco Canyon Water District process a combined average total of 19.3 million gallons per day and send to the ocean 9.5 million gallons per day. The remaining 9.8 million gallons per day are used for landscape irrigation.
- F.7.** In north and central Orange County, the cost to create potable recycled water is \$1,468 per million gallons or \$1,133 less than the current cost per million gallons of imported water.
- F.8.** The South OC Wastewater Authority (SOCWA) cost to recycle wastewater currently exceeds the cost of imported water, however the Grand Jury believes that the cost of imported water will increase.

RECOMMENDATIONS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are submitted to the Presiding Judge of the Superior Court.

Based on its investigation of Wastewater Processing in Orange County, the 2014-2015 Orange County Grand Jury makes the following four recommendations:

- R.1.** Orange County Sanitation District should conduct a study of possible methods of increasing the amount of processed wastewater sent to Orange County Water District, including timelines and noting any barriers that may prevent increasing flow, and implement the most cost effective method to reduce the amount of imported water to Orange County. (F.1.) (F.2.) (F.7.)
- R.2.** Orange County Water District should conduct a study of possible methods of increasing the amount of processed wastewater and implement the most cost effective method to reduce the amount of imported water to Orange County. (F.2.) (F.3.) (F.7.)
- R.3.** South Orange County Wastewater Authority should conduct a study of possible methods of increasing the amount of processed wastewater and implement the most cost effective method to reduce the amount of imported water to Orange County. (F. 5.) (F. 8.)
- R.4.** The El Toro Water District, the City of San Clemente, the Santa Margarita Water District, and the Trabuco Canyon Water District should conduct a study of possible methods of increasing the amount of processed wastewater and implement the most cost effective method to reduce the amount of imported water to Orange County. (F.6.)

REQUIRED RESPONSES

The California Penal Code section 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected official shall comment on the findings and recommendations pertaining to the matters under that elected official's control within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code section 933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making authority. The

response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section 933.05 are required from:

Responses Required:

1. Responses to Findings F.1., F.2. and Recommendation R.1. are required from the Board of Directors of the Orange County Sanitation District.
2. Responses to Findings F.1., F.3., F.7., and Recommendation R.2. are required from the Board of Directors of the Orange County Water District.
3. Responses to Findings F.5., F.8., and Recommendation R.3. are required from the Board of Directors of the South Orange County Wastewater Authority.
4. Responses to Findings F.6., and Recommendation R.4. are required from the Board of Directors of the El Toro Water District.
5. Responses to Findings F.6., and Recommendation R.4. are required from the Mayor of the City of San Clemente.
6. Responses to Findings F.6., and Recommendation R.4. are required from the Board of Directors of the Santa Margarita Water District.
7. Responses to Findings F.6., and Recommendation R.4. are required from the Board of Directors of the Trabuco Canyon Water District.
8. Response to Finding F.4. is required from the Board of Directors of the Irvine Ranch Water District.

COMMENDATIONS

The 2014-2015 Grand Jury commends the OC Sanitation District and the OC Water District for the partnership they developed to recycle wastewater for the beneficial use of north and central OC residents. Last year's average of 77 mgpd of recycled water reduces dependence on more expensive imported water at a time when the amounts of external water supplies are stressed by the State's prolonged drought.

The 2014-2015 Grand Jury commends the Irvine Ranch Water District for the years of recycling water for landscape irrigation leadership. Last year they recycled over 92% of the wastewater they received.

REFERENCES

State of water, summer 2013: A call for investing in reliability.[Pamphlet]. (2013). Municipal Water District of Orange County.

Municipal Water District of Orange County (2014). *Water rates and charges*. Retrieved from http://www.mwdoc.com/pages.php?id_pge=166

APPENDIX:
GLOSSARY

AF. Acre-Foot. The amount of water needed to cover an acre (approximately a football field) one foot deep, or 325,900 gallons. One acre-foot can support the annual indoor and outdoor needs of between one and two households per year, and, on average, three acre-feet are needed to irrigate one acre of farmland.

Aquifer. A geologic formation of sand, rock and gravel through which water can pass and which can store, transmit, and yield significant quantities of water to wells and springs.

Groundwater. Water that occurs beneath the land surface and fills partially or wholly pore spaces of the alluvium, soil, or rock formation in which it is situated. Does not include water which is being produced with oil in the production of oil and gas or in a bona fide mining operation.

Groundwater basin. A groundwater reservoir defined by all the overlying land surface and the underlying aquifers that contain water stored in the reservoir. Boundaries of successively deeper aquifers may differ and make it difficult to define the limits of the basin.

Groundwater Replenishment System (GRS). An OCWD/OCSD joint project being developed to provide up to 100,000 acre-feet of reclaimed water annually for groundwater replenishment. Treated wastewater will undergo further treatment at OCWD-using the same technology as bottled water companies-before it is piped northward along the Santa Ana River to replenish the groundwater basin in the inland part of the county. Visit the GWR System website (<http://www.gwrsystem.com>).

Imported water. Water that has originated from one hydrologic region and is transferred to another hydrologic region. Metropolitan Water District of Southern California(MET) imports water from the Colorado River and Northern California. MET's agency in OC is the Municipal Water District of OC (MWDOC).

Potable water. Suitable and safe for drinking.

Primary treated water. First major treatment in a wastewater treatment facility, usually sedimentation removal but not biological oxidation.

Recycling. A type of reuse, usually involving running a supply of water through a closed system again and again. Legislation in 1991 legally equates the term "recycled water" to reclaimed water.

Santa Ana River Basin Aquifer. That portion of the Santa Ana River that is located within OC.

Secondary Treatment. Generally, a level of treatment that produces 85 percent removal efficiencies of biological oxygen demand and suspended solids. Usually carried out through the use of trickling filters or by the activated sludge process.

Tertiary treatment. The treatment of wastewater beyond the secondary or biological stage. Normally implies the removal of nutrients, such as phosphorous and nitrogen, and a high percentage of suspended solids.

Wastewater. Water that has been previously used by municipality/residences, industry or agriculture and has suffered a loss of quality as a result of use.

**THE ORANGE COUNTY
ANIMAL SHELTER:
THE FACILITY, THE FUNCTION,
THE FUTURE**

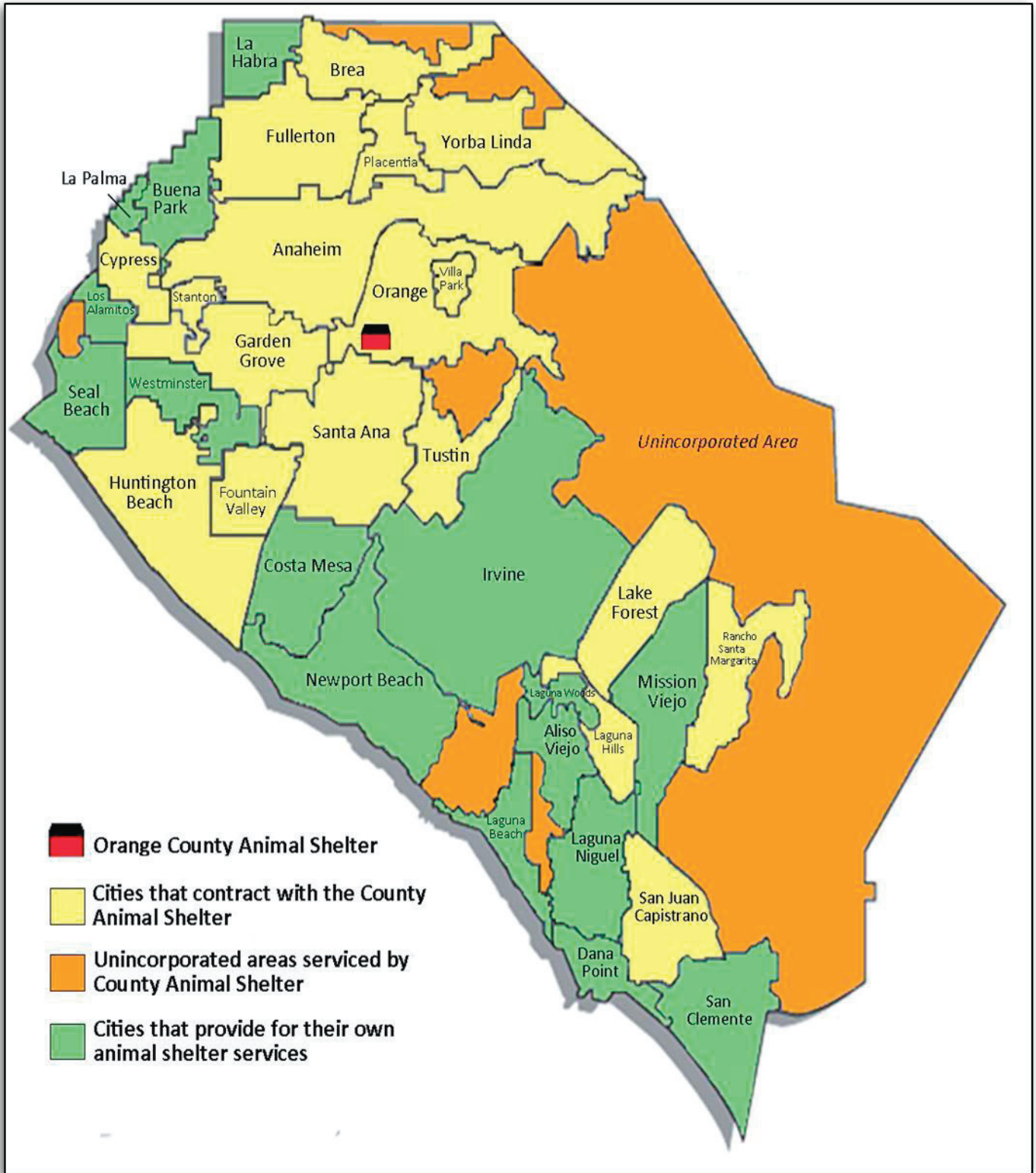


GRAND JURY 2014-2015

**“Ever occur to you why some of us can be this much concerned with animals suffering? Because government is not. Why not? Because animals do not vote.”
Paul Harvey**

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County and City Service Areas for Animal Shelter

EXECUTIVE SUMMARY

Orange County Animal Care (OCAC) is charged with caring for lost and abandoned animals from the unincorporated areas of Orange County (County) as well as from the 18 cities that contract with the County for animal shelter services. The Orange County Animal Shelter (Animal Shelter) was built seven decades ago. Today, the 74-year-old facility is rundown, overcrowded, and unable to sustain the primary responsibility of OCAC: compassionate care of the County's companion animals. The old, dilapidated, inadequate facility fails to provide a safe, clean environment for staff, volunteers, and the public, and it is unable to provide adequate care of the animals.

For more than 20 years, the Orange County Board of Supervisors (BOS) has been keenly aware of the real and immediate need for a new shelter facility. In fact, in 1995 the BOS set aside seed money (\$5 million) for the construction of a new animal shelter and directed County executives to move forward with the project. To date, nothing substantive has been accomplished toward achievement of this task.

In 1999, when the United States Marine Corps closed the Tustin Air Station, the County agreed to accept from the Department of the Navy (DoN) a five-acre site at the Marine base for a future animal shelter facility. However, long-lingering environmental clean-up issues still need to be addressed by the DoN before conveyance of the property can take place. Environmental mitigation of contaminated ground water at the site has been underway for 15 years, and the DoN cannot even predict a completion date. Meanwhile, the County has deferred any action with regard to the new shelter, preferring to wait for completion of the DoN's clean-up of the Tustin site. The County has no backup plan or secondary site selected despite possible locations such as County-owned property at the James A. Musick Facility, County-owned property at the Irvine Great Park, or sites in unincorporated Ladera Ranch.

BACKGROUND

Eighteen Orange County cities contract with the County of Orange Community Resources Department (OCCR) for shelter services. These contracts are "evergreen" (automatically renewing), but either party may opt out with a six-month notice. The remaining 16 county cities either have their own shelter, or contract with other cities, or humane groups for animal care services.

In 1941, the County built the Orange County Animal Shelter (Animal Shelter) on County-owned property in the City of Orange to serve a County human population of 200,000. Today, the combined population of the 18 contract cities plus the unincorporated areas of the County served by the Animal Shelter is ten times larger: 2,100,000 (US Census Bureau 2010, 2013). The Census estimates that this population reflects approximately *350,000 households with at least one pet* (US Census State & County Quick Facts, 2013).

Every California county with a population exceeding 500,000 has more than one animal shelter facility. (Alphabetical List, 2014) Orange County is the exception, having one shelter facility despite the geographic and demographic need for multiple shelters.

The Animal Shelter facility is 74 years old and is in utter disrepair. Over time, the shelter's expansion has been limited to the piecemeal placement of sheds, gazebos, lean-tos, trailers, and miscellaneous pre-fabricated units. Structural integrity, cleanliness, and sanitation continue to be compromised and pose serious risks to human as well as animal health (JVR Shelter Strategies,2014; UC Davis Report, 2008).

The 2014/15 budget for OCAC is \$17,862,307. OCAC is virtually self-supporting through fees generated from the 18 contract cities and the unincorporated areas with occasional contributions from the County's general fund.. The contract cities pay the County for services provided, primarily picking up of dead or injured animals and animal licensing services. The contracting city also pays the County for its stray animals that are impounded at the Animal Shelter. The cities are billed by the County in arrears for these services on a quarterly basis. These fees do not cover the costs of any capital outlay. Thus, the contracting cities do not contribute toward the costs of animal shelter structures, buildings, kennels, or the veterinarian medical clinic. When contacted by the Grand Jury in connection with this report, several of the contract cities explained that they had explored the feasibility of establishing their own animal shelter facility but had found this alternative to be more costly than continuing to contract with the County.

REASON FOR THE STUDY

1. There have been three prior Grand Jury reports discussing the need for a new Animal Shelter facility:
 - a. The 1999/2000 OC Grand Jury report observed: "The Animal Care facility is aging badly...a new facility should be state of the art...." (Orange County Grand Jury, 2000)
 - b. Finding #13 of the 2003/04 OC Grand Jury report stated "Unless Animal Care Services (ACS) is able to provide for the expansion of the Animal Shelter, ACS may have to limit the services it provides or the number of animals it accommodates." In response, the County disagreed wholly with the finding and stated that "the recommendation will not be implemented because it is *not warranted*."(Italics added.) (Orange County Grand Jury, 2004)
 - c. Finding #2 of the 2007-2008 OC Grand Jury report states, "The Orange County Animal Shelter is faced with a growing animal population problem that exceeds the capacity of the County Shelter...." In response, the County concurred with this Finding. (Orange County Grand Jury, 2008)
2. The Grand Jury received complaints during its initial inquiry from County residents, from current and former shelter employees (including high level animal shelter staff), and from County humane organizations asking the Grand Jury to investigate.
3. The Grand Jury received statements from some of the OCAC contract cities that they may pursue other shelter options due to the County's inaction and delays relative to construction of a new shelter facility.

METHODOLOGY

The Grand Jury interviewed a number of public officials, conducted site visits to local shelters, and researched existing studies and reports on animal care in Orange County and other California counties. Analysis and confirmation of facts led to detailed findings and conclusions. The following lists provide specific examples of key contact sources evaluated in generating this report.

Interviews

1. Current and former OCAC employees and staff, executive management of the shelter, veterinarians, and contract veterinarians;
2. County executives, including representatives from the offices of the Chief Financial Officer, the County Executive Officer, the OCCR Department, the OC Performance Auditor, and the Auditor-Controller;
3. Vector Control staff;
4. OC Health Care medical staff;
5. Representatives of the County of Los Angeles animal care shelters;
6. Department of the Navy's Base Reallocation and Closure (BRAC) officials;
7. California Department of Toxic Substances Control; and
8. Officials of the County of Riverside Animal Shelter Services.

Site Visits

1. The Orange County Animal Shelter;
2. The Riverside County (Jurupa) Animal Shelter; and
3. The City of Mission Viejo Animal Shelter.

Previous Grand Jury Reports

The subject of Orange County Animal Care has been of interest to previous Grand Juries and reviewed in the following Grand Jury reports:

1. 1999/2000 "We Can Do Better...Improving Animal Care in Orange County."
2. 2003/2004 "The Orange County Animal Shelter– Are Improvements Needed?"
3. 2007/2008 "Is Orange County Going To The Dogs?"

Independent Reports on the OC Animal Shelter

1. UC Davis 2007, "The UC Davis Koret Shelter Medicine Program, Final Consultation Report, February 2, 2008" (UC Davis, 2007);

2. JVR Shelter Strategies, “Orange County Animal Care, Shelter Consultation Summary, June 16, 2014” (Robertson, 2014);
3. Performance Audit report ordered by the OC Board of Supervisors in May, 2014, and submitted to OC Internal Audit in October, 2014; and
4. Vector Control investigative reports (multiple) in 2012, 2013 & 2014.

Internet

1. U. S. Census 2010 and 2013; (US Census Bureau 2010, 2013)
2. 58 county animal care websites in California.

INVESTIGATION & ANALYSIS

In 1995, the BOS set aside \$5 million in seed money for the design and construction of a new animal shelter. There were a series of debits to this fund at a time when the animal care function was a division of the OC Health Care Agency. These debits were for preliminary consultant studies regarding possible facility designs, an environmental study, and architectural designs: all of which were ultimately abandoned. The remaining balance in the set-aside fund is now \$4.4 million.

In FY 2007/08, Animal Care Services was transferred from its historic home in the OC Health Care Agency to become a division of the newly created OCCR, and re-named Orange County Animal Care. OCCR assumed responsibility for all animal care services as well as for the development of a plan for a new shelter, obtaining participation agreements with the contracting cities, and constructing and operating a new facility or facilities. From 2007 to the present, however, no preliminary design, schematic plan, or conceptual drawings have been developed by OCCR for presentation to any of the contracting cities or to the BOS.

The Grand Jury contacted all of the 18 contracting cities, with the majority responding; and, discovered that they have declined to make any firm commitment to the County to pay their pro-rata share of the capital costs of constructing a new shelter without seeing the scope of the project. The County maintains it cannot afford to build a new facility unless the contracting cities make a commitment to fund the project. This Grand Jury then asked architectural design firms that specialize in animal shelter projects what a preliminary design might cost, and was told that, depending on the scope of the project (square footage, building footprint, site configuration, etc.), costs would range between \$25,000 and \$50,000. Thus, an extremely small portion of the \$5 million set-aside for the design and construction of a new shelter could have been expended to prepare schematic designs and conceptual drawings for presentation to cities throughout the County. Two County executives admitted to the Grand Jury that schematic plans and preliminary drawings of a new shelter would be quite helpful in presenting a proposal to the 18 contract cities and getting them to “buy into the project,” but it had not occurred to the OCCR to have such preliminary designs prepared. The County and the 18 cities need to meet and discuss the design elements, but the County has made no attempt to initiate this process.

County officials have been pursuing an opportunity for a new shelter facility at the former United States Marine Corps Air Station-Tustin (MCAS-Tustin) for 15 years. Environmental clean-up of contaminated ground water at the site has delayed, and continues to delay conveyance of the site, from the DoN to the County. Representatives of the DoN have explained to the Grand Jury that while environmental mitigation at the site continues, there is no way to predict exactly when the site will be conveyed. The County has focused on the MCAS-Tustin site to the exclusion of any other potential site for a new facility. No site other than MCAS-Tustin, including any County-owned property, has been explored or seriously considered.

The DoN established the Restoration Advisory Board (RAB), when environmental mitigation began at MCAS-Tustin, to provide periodic updates regarding clean-up impacts to interested parties, such as the Community College District, the City of Tustin, and other entities to whom parcels would be conveyed upon completion of environmental mitigation. The Grand Jury has been unable to locate a record of any County of Orange representative ever attending these meetings.

Structural additions, alterations, and modifications at the Animal Shelter have occurred over the years. The City of Orange Community Development Department was not able to locate documentation of building permit issuance to the County for these structural additions, alterations, and modifications. This situation exposes the County to potential Uniform Building Code/California Title 24 violations and to other potential liabilities.

The 74-year-old main structure is built of unreinforced brick, and it seems doubtful the structure would survive any seismic event. One member of the BOS has explained to the Grand Jury that the County is unable to inspect the roof of the main structure for fear of its collapse.

There are no standard or regularly scheduled inspections of the Animal Shelter. The Grand Jury has found evidence of only one inspection ever conducted at the shelter: in December 2008, the California State Board of Veterinary Examiners inspected the veterinary clinic only, but not the entire facility. The veterinary clinic is a very small portion of the facility and would not be determinative in identifying shortcomings of the facility as a whole.

Section IV of the standard contract between the County and the 18 cities states, "The parties agree that there shall be a Financial/Operational Advisory Board to advise (the) County's Director of Animal Care on financial and operational matters...and to communicate with the Orange County City Manager's Association (OCCMA)." The seven members of the Advisory Board have been perpetually from the same cities and do not rotate among the 18 contract cities. The Advisory Board is scheduled to meet bimonthly and does not keep minutes.

FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2014-2015 County of Orange Grand Jury requires responses from each agency affected by

the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its examination of the Agencies and Departments within the County of Orange government, the 2014-2015 Grand Jury has arrived at four principal findings, as follows:

- F-1** The Grand Jury has concluded that the County's lack of leadership, lack of commitment to animal care, and the prioritization of other Orange County Community Resources Department functions ahead of Orange County Animal Care are the primary reasons for failure to address the need of new Animal Shelter facilities.
- F-2** The 18 cities that contract with Orange County Animal Care for shelter services have not had an opportunity to contribute to capital costs for a new Animal Shelter facility, or facilities, because they have not been shown any conceptual plans or drawings of planned projects with cost estimates.
- F-3** The County has not developed any viable conceptual plan for a new animal shelter facility at the Marine Corps Air Station-Tustin, or at any other location, for presentation to the 18 contracting cities despite the cities' need to see plans before committing to support the project.
- F-4** Multiple county animal shelters are the standard throughout California counties of similar geographic size and population. In the event of a shutdown at the Orange County Animal Shelter because of quarantine, earthquake, or other disaster, animal-care services in the unincorporated areas of Orange County and the contract cities would cease.

RECOMMENDATIONS

In accordance with California Penal Code Sections 933 and 933.05, the 2014-15 Grand Jury requires responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of Orange County Animal Care, the 2014-2015 Orange County Grand Jury makes the following four recommendations:

- R-1** The Orange County Board of Supervisors, County Executive Officer, and Director of Community Resources should place a high priority on the design and construction of new, adequately sized, staffed, and funded animal shelter facilities; and should pursue this long overdue project until such time that construction is completed. (**F-1, F-4**)
- R-2** The Orange County Board of Supervisors should investigate and analyze the advisability and feasibility of selecting two or three sites for construction of animal care shelters to provide services accessible to all parts of the County. (**F-4**)

- R-3** The Orange County Executive Officer should seriously evaluate designating a staff member with the assignment of facilitating the construction of a new Animal Shelter. This individual's tasks should include negotiating with the contracting cities for their capital contributions, release of requests for proposals for building and site designs, coordination with the Board of Supervisors for the County to self-finance the project, and any other project-manager tasks needed for the successful creation of a new shelter or shelters. **(F-1, F-2, F-3, F-4)**
- R-4** The 18 contracting cities need to review their long-term commitment to be part of Orange County Animal Care as opposed to pursuing animal-care opportunities on their own or joining with neighboring cities that have shelters. The contracting cities need to demand that the County provide them a viable plan with cost and schedule estimates for a new facility or facilities to evaluate as part of their commitment review. **(F-4)**

REQUIRED RESPONSES

The California Penal Code section 933 requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code section 933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:
- (1) The respondent agrees with the finding.
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.
- (b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:
- (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for

the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section 933.05 are required from:

Requested Responses:

Responses to **F-1** and **F-4** are requested from the County Executive Officer.

Responses to **F-1**, **F-2**, **F-3**, and **F-4** are requested from the Director of Orange County Community Resources.

Responses to Recommendations **R-1** and **R-3** are requested from the County Executive Officer.

Required Responses:

Response to **F-4** is required from the Orange County Board of Supervisors.

Responses to Recommendations **R-1** and **R-2** are required from the County Board of Supervisors.

Responses to Recommendation **R-4** are required from the Mayors of the 18 Animal Shelter contract cities (listed below):

The City of Anaheim

The City of Brea

The City of Cypress

The City of Fountain Valley

The City of Fullerton

The City of Garden Grove

The City of Huntington Beach

The City of Laguna Hills

The City of Lake Forest

The City of Orange

The City of Placentia

The City of Rancho Santa Margarita

The City of San Juan Capistrano

The City of Santa Ana

The City of Stanton

The City of Tustin

The City of Villa Park

The City of Yorba Linda

See also Response Matrix below for summary of required responses.

The Orange County Animal Shelter: The Facility, The Function, The Future

RESPONSE MATRIX

	<u>RESPONDENTS</u>	Findings				Recommendations			
		<u>F1</u>	<u>F2</u>	<u>F3</u>	<u>F4</u>	<u>R1</u>	<u>R2</u>	<u>R3</u>	<u>R4</u>
1	County Chief Executive Officer	X			X	X		X	
2	Director of Orange County Community Resources	X	X	X	X				
3	Orange County Board of Supervisors				X	X	X		
4	Mayor City of Anaheim								X
5	Mayor City of Brea								X
6	Mayor City of Cypress								X
7	Mayor City of Fountain Valley								X
8	Mayor City of Fullerton								X
9	Mayor City of Garden Grove								X
10	Mayor City of Huntington Beach								X
11	Mayor City of Laguna Hills								X
12	Mayor City of Lake Forest								X
13	Mayor City of Orange								X
14	Mayor City of Placentia								X
15	Mayor City of Rancho Santa Margarita								X
16	Mayor City of San Juan Capistrano								X
17	Mayor City of Santa Ana								X
18	Mayor City of Stanton								X
19	Mayor City of Tustin								X
20	Mayor City of Villa Park								X
21	Mayor City of Yorba Linda								X

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ORANGE COUNTY EMERGENCY OPERATIONS



GRAND JURY 2014-2015

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EXECUTIVE SUMMARY

The emergency management organizations in the County of Orange (County) have done an outstanding job of preparing for every conceivable disaster in the County, with detailed plans, regular training, and public education in dealing with emergency situations. The only area of weakness in the plan that the 2014-2015 Orange County Grand Jury (Grand Jury) has found is contingency planning for the possible destruction or loss of the Emergency Operation Center (EOC) at the Loma Ridge facility. In other words, the County appears prepared for every significant emergency except for catastrophic failure of its most central and important emergency facility during a major event.

The Loma Ridge EOC coordinates County responders and manages communications to other support providers outside the County with disparate radio systems. The Loma Ridge EOC requests and coordinates mutual aid between cities in the County and from other counties and the State of California. The ability to smoothly recover and transition these functions to an alternate site would be crucial in an emergency if the Loma Ridge EOC facility were out of service or inaccessible.

The Grand Jury acknowledges that the probability of complete loss is low, but it could happen. Who would have thought that Orange County could get almost 30 inches of rain in 4 days? However, it happened in 1916 and 1938 with severe flooding consequences. The Grand Jury found that there are insufficient plans, procedures, and training for the smooth transition to an alternate EOC. Many counties have dedicated alternate EOC sites, but not Orange County.

The Grand Jury inspected the Loma Ridge EOC facility and found it to be well prepared to respond to emergency activations with few exceptions. The County has addressed all items that previous grand juries reported as physical deficiencies. The single-lane road leading to the facility is adequate, but it remains unimproved, with lingering concerns regarding access and safety.

The dedicated 911 operators and radio dispatch staff are working with older technology in a suboptimal workspace. The data network capability lacks a robust back up system in the event of failure. Nevertheless, the Loma Ridge EOC has served the County well during recent activations with an empowered team able to respond quickly to challenges.

BACKGROUND

Emergency Operation Makeup and Mission

The primary Orange County EOC is located on top of a remote area known as Loma Ridge that overlooks most of the county. Access to Loma Ridge is by a County-owned restricted road off Santiago Canyon Road. The Irvine Company donated the land to the County. Under an agreement between the County and the Irvine Company, the Irvine Company formed a conservancy to oversee the designated open space and to protect the natural environment. The Irvine Company is responsible for appointing the

directors on the conservancy board. Any changes or improvements to the facility or adjacent land must be coordinated and approved by the conservancy board.

During a disaster, the Loma Ridge EOC functions as the coordination (command/control), and communication center for both the County and the Operational Area emergency response organizations. The County Emergency Management Division (EMD) coordinates emergency response efforts between County agencies and departments. The County Operational Area (OA) emergency response organization includes the County agencies and departments, as well as members from all other municipalities, schools, and special districts in the County. The OA organization takes responsibility for coordination of mutual aid with state and federal entities during adjacent geographic events, major emergencies and recovery operations. The Loma Ridge EOC provides a central point for coordinating the operational, administrative, and support needs of County and OA member organizations, when activated during an emergency.

At Loma Ridge, the Emergency Communications Bureau and the EOC coordinate County emergency responders and provide radio patch connections to those not operating on the County's radio network. The Loma Ridge EOC also requests and coordinates mutual aid from other counties, the State, and federal agencies. The ability to recover these functions at an alternate EOC site is crucial in an emergency in event that Loma Ridge EOC is out of service.

The Orange County EOC gathers and processes information to and from the county, cities, school districts, business and industry sectors, volunteer organizations, individuals, and State and federal agencies. It has the ability to function as a virtual EOC so that county operational area members may communicate between individual EOCs without co-location. The EOC is responsible for managing the support operations of regional resources designed to more efficiently use the pooled resources of operational area members or external resources to benefit the operational area as a whole (Emergency Operations Center Web site).

All cities in the County are required to have their own emergency operations centers. Also, County departments and agencies (e.g., Orange County Fire Authority, Public Works) have their own Department Operation Centers (DOCs), which respond to more localized problems. When more than one local agency is involved or when the event is bigger than the local agency can handle, they request activation of the County EOC. The type and complexity of the event determines the level of activation and the staff required to report to the EOC. The OC Emergency Operation Plan covers localized events in unincorporated areas of the County, whereas the Operational Area Emergency Plan covers extraordinary, interjurisdictional events requiring mutual aid across city, county, or state boundaries.

The Grand Jury has found that the emergency management team within the Sheriff's Department does significant planning and coordination for the Orange County Emergency Management Council (EMC). A designated member of the Board of Supervisors chairs the EMC, which consists of representatives of all County agencies and departments involved in emergencies and public safety. The EMC coordinates a

very complete plan for almost every conceivable emergency that might affect the County. Appendix A provides a list of threats for which contingency plans exist.

Members of the Orange County EMC, the Operational Area (OA) EMC, and the OA Executive Council meet on a quarterly schedule to review the Emergency Operations Plan (EOP), coordinate schedules, discuss training, identify upcoming issues, and review recent events affecting safety. These three councils consist of representatives of every department and organization that are involved in handling emergencies. Appendix B provides a list of members and attendees at these meetings.

Communications at Loma Ridge

All organizations that support the EOC mission (emergency operations, fire, police, public works, etc.) rely on, and utilize, a variety of redundant communication services at Loma Ridge including telephones (140+ lines), cellular phone access (with localized repeater), Internet (email, web-based applications), fax, countywide coordinated communication system (CCCS) radios, and satellite phones. Co-located at Loma Ridge, the 800 MHz band CCCS radio system and the OCSD 911- call dispatch center perform key operational roles for everyday operations as well as during EOC activations. The Control-One function at Loma Ridge can patch 800 MHz CCCS channels to direct communication to adjacent and outside agencies not using 800 MHz radios (e.g., California Highway Patrol, US Forest Service, San Diego Emergency operations, etc.).

Red Channel is an emergency radio broadcast system installed on a separate speaker and microphone in vehicular radios. This radio channel is always turned on and audible, countywide. Should the CCCS system experience a catastrophic failure at Loma Ridge, the system can retain degraded operational capability via the remaining radio repeater network across the County.

In the event of failure of the Loma Ridge 911 system, 911 calls are switched over to the Santa Ana 911 center. Conversely, the Loma Ridge 911 systems can act as the backup for Santa Ana 911 system. Lastly, the Radio Amateur Civil Emergency Service (RACES) citizen volunteer group provides additional redundancy for disaster communication support through a network of amateur radio (ham radio) operators.

The County owns a Mobile Command Center and a Mobile EOC, known as Samantha 1 and Samantha 2, which are semi-tractor trailer vehicles that are equipped to act as incident command posts when deployed. The Sheriff-Coroner's Homeland Security Division is responsible for management and operation of these assets, which are stored behind the Registrar of Voters in Santa Ana when not deployed.

REASON FOR THE STUDY

The Grand Jury desired to understand the functionality and operation of the EOC during emergency activations. The Grand Jury reviewed previous Grand Jury reports on the Loma Ridge EOC and decided that it was important to confirm adequate resolution of previous findings, recommendations, and County responses. In addition, the Grand Jury decided to evaluate the state of emergency operations in general because several years have passed since the last review of this critical facility.

METHODOLOGY

The Grand Jury reviewed previous Grand Jury reports and compiled a list of all previous findings and recommendations to review them for compliance. The Grand Jury carried out Internet searches for information and background, conducted interviews, and toured facilities at Loma Ridge and others throughout the County.

The Grand Jury conducted a review of the Orange County EOP, along with supporting plans. The Grand Jury attended meetings of the EMC, the Joint EMC and OA Executive Board, and the OA Executive Board. The Grand Jury also conducted interviews with executives and personnel of agencies and divisions that are involved in emergency response or that support the EOC.

INVESTIGATION AND ANALYSIS

Review of Previously Identified Deficiencies

The Grand Jury investigated the findings and recommendations of previous Grand Juries concerning the Loma Ridge EOC to assess the current condition of the physical facility for readiness. The Grand Jury selected the following five items from the 2007-2008 Grand Jury and the 1999-2000 Grand Jury reports for review.

1. "F-1. HVAC systems are inadequate for the Emergency Operations Center facility because they lack smoke filtration." (2007-2008 Grand Jury)

The current Grand Jury investigation found that the heating, ventilation, and air conditioning (HVAC) system has been updated with a damper re-circulation filter system for inside air. This does not scrub the air or allow for introduction of outside air, but it does remove particles and recirculates filtered air within the building. This system can only function for short periods during a fire event due to carbon monoxide buildup. Sensors monitor the air throughout the building. If the air in the building is below acceptable levels, an alarm sounds. Discussion with technicians revealed that they believe this will give sufficient time for the danger from a passing fire to cease within the time that the filters can provide protection and outside air can be reintroduced.

2. "F-2. The sewage system is barely adequate for the present staffing level. Any increase in staffing will overload the system and require daily or more frequent trips of the sewage pump truck." (2007-2008 Grand Jury)

"F-2.1 In case of a blocked access road due to fire or earthquake, the sewage would not be able to be pumped out, rendering the Emergency Operations Center inoperable." (2007-2008 Grand Jury)

The Grand Jury found that the sewage system at the EOC could handle 30,000 gallons. This will support a full EOC activation for 10 to 15 days without requiring service and is sufficient.

3. "F-3. The Emergency Operations Center uses water for its fire suppression system in vital equipment areas that house computer servers, critical

telecommunication systems, and backup batteries. The release of water will damage electronic equipment in the vicinity and the system responds only when fire has substantially developed.” (2007-2008 Grand Jury)

The Grand Jury found fire-suppression-system upgrades have been installed to protect electronic equipment. This system extinguishes a fire without water by using a chemical to smother the fire through oxygen depletion. The chemical disburse in a gaseous form that does not damage or short out critical electronic equipment.

4. “F-4. The four Liebert Uninterruptible Power Supply (UPS) systems used in the critical electrical service are nearing the end of their rated design life of 20 years according to the manufacturer’s specifications. The demand on these units has exceeded the desired, less than 50% of, available capacity. (2007-2008 Grand Jury)

The Grand Jury found upgrades to the UPS power systems to support electronic equipment during loss of commercial power. The upgraded UPS systems are only a transition source to provide continuous power until the emergency generators come on-line and assume the full electrical load. The systems provide power to sensitive electronic equipment without any change or spikes in the power. This system also supports a switch back to commercial power. The EOC is not included in the building UPS at this time. The UPS covers only the Emergency Communications Bureau Dispatch Center and related components/ rooms.

5. “1. Widen the primary access road to the Emergency Operations Center to 24 feet and eliminate blind curves.” (1999-2000 Grand Jury)

The Grand Jury found that the Loma Ridge access road has not been upgraded to two lanes. The Grand Jury inspected the road for width, blind curves, and the lack of two lanes on portions of the road. Although it would be optimal to improve the access road to two lanes for better and safer access for fire protection and other vehicles, a Grand Jury inspection of the road found that the current condition could accommodate large vehicles such as fire trucks. The road is adequate to handle the traffic of emergency vehicles for fire protection. There are some concerns with two-way traffic, but turnouts and passing areas minimize safety issues. It would be beneficial to improve the road at some point; however, widening the road would be costly and would require approvals by the conservancy board. There are secondary plans to provide helicopter access to the Loma Ridge EOC if a problem on the road should occur. Key staff required at the Loma Ridge EOC during activation have contingency pick up points regularly reviewed and updated.

The Grand Jury has concluded that all previous concerns regarding the physical status of the primary EOC have been adequately resolved.

The Grand Jury has found in its study that the Loma Ridge EOC usage has increased beyond its original design and may need to be expanded further in the near future. The growing reliance on the Internet for posting and publishing public information, social media, and data collection demands redundancy and backup

systems. Most of the critical workstations at the Loma Ridge EOC have battery backup systems, but backup for a failure of data lines depends on a very limited satellite connection. The Grand Jury also interviewed several employees at the Loma Ridge EOC who stated that they believe that the addition of windows to provide natural light would help mitigate the high-stress working conditions of emergency communications.

Alternate Emergency Operations Center

The County's EOP is detailed, thorough, and complete—with one significant exception. There is no Plan B, i.e., no viable back-up plan for an alternate EOC. The Grand Jury launched an investigation to understand what plans exist to transition emergency operations if the primary EOC at Loma Ridge becomes inoperable due to a catastrophic loss during an emergency.

The Grand Jury found that in the event the Loma Ridge EOC is knocked out of commission by a disaster, a contingency plan to identify a specific alternate EOC has not been defined. The only mention of activating an alternate EOC in the EOP is the following statement: "The alternate EOC location has two options: the use of another local government EOC, such as a city EOC in Orange County, or the use of a mobile command vehicle" (County of Orange EOP, 2014, p.73). In investigating these two amorphous options, the Grand Jury discovered that the cities' EOCs do not have enough room or enough equipment to accommodate the County's emergency management team. The use of the mobile command center would require the acquisition of a large-size shelter or tents, and the logistics of setting up telephones and computer equipment under emergency conditions remain undefined.

Record searches and interviews of emergency-management staff revealed that no mock physical or tabletop exercise based on the hypothetical loss of the Loma Ridge EOC has been conducted in over 10 years (personal communication, December 17, 2014). There is no written contingency plan or detailed procedure on how to activate an alternate EOC facility. It is true that a new Saddleback Sheriff Station (also known as the Southeast Sheriff Station) has space designated for use as an alternate EOC, but it has yet to be reviewed for disaster resistant construction. In addition, funding requirements of over \$1 million for the equipment have not been allocated or approved (personal communication, October 31, 2014).

The responsibility of the Sheriff's Emergency Management Division (EMD) organization is a staff role to prepare for, respond to, and recover from disasters. When an emergency is declared, the EOC is activated by the EMD. The EOP specifies a level of activation based on type and severity of the disaster. The activation level defines associated staffing requirements, communications protocols, and assignment of an overarching Director of Emergency Services (DES) for the event. The DES is responsible for the command/control structure and implementation details, as specified in the EOP. An alternate EOC is not just an alternative communication center and support group, but also a command/control center that must be able to support the needs of the Director, the EMD staff, as well as all activated emergency organizations.

The County has reacted to eight federally declared disasters in 11 years and an average of 25 locally declared disasters in last five years. The County is the second most dangerous place in the U.S. for natural disasters, according to a recent *Time Magazine* article (Time Magazine, 2014, p. 50). The article indicated that the County is subject to a multitude of potential disasters. A reasonable inference from this article is that, over time, a localized disaster of sufficient size or magnitude could jeopardize the primary EOC and render it inoperable. The Grand Jury found that the majority of the counties in Southern California have designated and dedicated alternate EOC facilities.

There are many types of events that can cause catastrophic disaster to Orange County. For instance, in 1916 and again in 1938, Southern California received 20 to 30 inches of rain in a four-day period (NOAA, pages 8, 9 and 13). In addition, structural engineers state that no building can be certified to withstand any earthquakes. Depending on earthquake type, direction, magnitude, and distance from epicenter, a building can remain standing following an 8.0 magnitude (Richter scale) earthquake or fall in a 3.0 magnitude earthquake. Loma Ridge is designed to resist a 7.0 magnitude earthquake (Personal communication, October 31, 2014). Lastly, acts of global terrorism and civil unrest continue to cause concern throughout the country.

A large number of those interviewed by the Grand Jury agreed that there are deficiencies in the preparation and planning for the transition to an alternate EOC. Several individuals said that they were trying to come up with a plan on their own. Consequently, the Grand Jury concluded that the County lacks a comprehensive contingency plan with multiple alternate EOC site options and that no recent exercise has been held to test and train for the eventuality that the primary EOC at Loma Ridge becomes inoperable during an emergency disaster.

FINDINGS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires responses from each agency affected by the findings presented in this section. The responses are submitted to the Presiding Judge of the Superior Court.

Based on its investigation of Orange County Emergency Operations in Orange County, the 2014-2015 Orange County Grand Jury has arrived at four principal findings, as follows:

- F.1.** The Grand Jury finds that all previous recommendations by prior Grand Juries concerning the physical status of the primary Emergency Operations Center have been adequately addressed.
- F.2.** The Grand Jury finds that the backup system for Internet data communications at the Loma Ridge Emergency Operations Center is a limited capability satellite link, which is far less capable than the primary system and may prove to be inadequate.

- F.3.** The Grand Jury finds that a comprehensive, feasible alternate Emergency Operations Center plan with multiple site options and activation instructions has not been developed.
- F.4.** The Grand Jury finds that a mock exercise to test the alternate plan and to teach participants what to do in the event of a loss of the primary Emergency Operations Center at Loma Ridge has not been held in over ten years.

RECOMMENDATIONS

In accordance with California Penal Code sections 933 and 933.05, the 2013-2014 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are submitted to the Presiding Judge of the Superior Court.

Based on its investigation of Orange County Emergency Operations in Orange County, the 2014-2015 Orange County Grand Jury makes the following three recommendations:

- R.1.** The Grand Jury recommends that an additional high-speed network connection to Loma Ridge be installed to provide Internet redundancy to mitigate risk of degraded communications. Consider installing a separate underground fiber optic cable feed to the Emergency Operations Center. (F.2.)
- R.2.** The Grand Jury recommends that a comprehensive, feasible alternate Emergency Operations Center plan be developed, with multiple site options and activation instructions. (F.3.)
- R.3.** The Grand Jury recommends that regularly scheduled exercise drills be held to test the alternate Emergency Operations Center backup plan and train all participants in the procedures to be followed in the event of loss of the primary Emergency Operations Center at Loma Ridge. (F.4.)

REQUIRED RESPONSES

The California Penal Code section 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected official shall comment on the findings and recommendations pertaining to the matters under that elected official's control within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code section 933.05, subdivisions (a), (b), and (c), provides as follows, the manner in which such comment(s) are to be made:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section 933.05 are required from:

Responses Required:

F.1, F.2, F.3, F.4, R.1, R.2, R.3: Orange County Sheriff's Department

Responses Requested:

R.1, R.2, R.3: OC Emergency Management Council

COMMENDATIONS

The 2014-2015 Grand Jury commends all members of the Orange County Emergency Management Council for the outstanding job they perform in preparation for and conduct of emergency operations. Their planning and preparations are critical in recovery from emergency and disaster situations. The Grand Jury would especially like to point out the outstanding performance and dedication of the Director of Emergency Management and the Emergency Management Division for their support.

REFERENCES

1999-2000 Grand Jury report-“Access Concerns at the Orange County Emergency Operations Center ”.

2007-2008 Grand Jury report – “Can the Emergency Operations Center Loma Ridge survive a disaster?”

“Are There Any Safe Places Left To Live?” Time Magazine September 8-15, 2014 – retrieved from <http://time.com/safest-counties/>

County of Orange Emergency Operations Plan, May 2014

Emergency Operations Center Web site <http://ocgov.com/about/emergency/eoc>

National Oceanic and Atmospheric Administration (). (Updated February 2010) *A history of significant weather events in Southern California*. Retrieved from <http://www.wrh.noaa.gov/sgx/document/weatherhistory.pdf>

APPENDIX A: HAZARD ASSESSMENTS

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HAZARD THREAT	PROBABILITY OF OCCURRENCE			EFFECT			HAZARD RATING (Probability x Effect)
	Likely 10	Possible 5	Unlikely 1	High 10	Average 5	Low 1	
Flood and Storm	X				X		50
Hazardous Materials	X				X		50
Wildland Fire	X				X		50
Earthquake		X		X			50
Civil Disturbance and Riot		X			X		25
Aircraft Incident		X			X		25
Oil Spill		X			X		25
Drought		X			X		25
Train Accident		X			X		25
Dam and Reservoir Failure			X	X			10
Disease Outbreak			X	X			10
SONGS			X	X			10
Terrorism			X	X			10
High Wind (Santa Ana Winds)	X					X	10
Extreme Temperatures	X					X	10
Urban Fire		X				X	5
Vector Control (Pests)		X				X	5
Landslide and Debris Flow		X				X	5
Stage III Energy Failure		X				X	5
Tornado		X				X	5
Tsunami			X			X	1

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APPENDIX B: OPERATIONAL AREA EMC MEMBERS

ORANGE COUNTY DEPARTMENTS	SPECIAL DISTRICTS
Assessor Auditor-Controller Child Support Services Clerk of the Board of Supervisors County Clerk-Recorder County Board of Supervisors County Counsel County Executive Office District Attorney Health Care Agency Human Resources Internal Audit John Wayne Airport OC Community Resources OC Public Works OC Waste and Recycling Probation Department Public Defender Public Administrator/Public Guardian Registrar of Voters Sheriff-Coroner Department Social Services Agency Superior Courts Treasurer-Tax Collector	Midway City Sanitary District Moulton Niguel Water District Municipal Water District of Orange County Orange County Cemetery District Orange County Fire Authority Orange County Sanitation District Orange County Transportation Authority Orange County Vector Control District Orange County Water District Placentia Library District Rossmoor Community Service District Santa Margarita Water District Serrano Water District Silverado-Modjeska Parks & Recreation District South Coast Water District Sunset Beach Sanitary District Surfside Colony Community Service Taxation District Surfside Colony Storm Water District Trabuco Canyon Water District Three Arch Bay Community Service District Water Emergency Response Organization of Orange County (WEROC) Yorba Linda Water District
	SCHOOLS/SCHOOL DISTRICTS
CITIES	Department of Education Anaheim City School District Anaheim Union High School District Brea-Olinda Unified School District Buena Park School District Capistrano Unified School District Centralia School District Cypress School District Fountain Valley School District Fullerton Joint Union High School District Fullerton School District Garden Grove Unified School District Huntington Beach School District Huntington Beach Union High School District Irvine Unified School District La Habra City School District

CITIES	SCHOOLS/SCHOOL DISTRICTS
Laguna Beach	Laguna Beach Unified School District
Laguna Hills	Los Alamitos Unified School District
Laguna Niguel	Lowell Joint School District
Laguna Woods	Magnolia School District
Lake Forest	Newport-Mesa Unified School District
Los Alamitos	North Orange County Community College District
Mission Viejo	North ROP
Newport Beach	Ocean View School District
Orange	Orange Coast Community College District
Placentia	Orange Unified School District
Rancho Santa Margarita	Placentia-Yorba Linda Unified School District
San Clemente	Rancho Santiago Community College District
San Juan Capistrano	Saddleback Valley Unified School District
Santa Ana	Santa Ana Unified School District
Seal Beach	Savanna School District
Stanton	South Orange County Community College District
Tustin	Tustin Unified School District
Villa Park	Westminster School District
Westminster	
Yorba Linda	
SPECIAL DISTRICTS	
Buena Park Library District	
Capistrano Bay Community Service District	
Costa Mesa Sanitary District	
East Orange County Water District	
El Toro Water District	
Emerald Bay Community Services District	
Garden Grove Sanitary District	
Irvine Ranch Water District	
Laguna Beach County Water District	
Mesa Consolidated Water District	
OCEMO APPROVED MEMBERS	
	American Red Cross Orange County Chapter
	California State University-Fullerton
	Seal Beach Naval Weapons Station
	University of California-Irvine A90 Health & Safety
VOLUNTEER ORGANIZATIONS	
	OneOC
	Operation OC
	Orange County 2-1-1

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CHILD ABUSE HOTLINE: UNANSWERED CRIES FOR HELP



GRAND JURY 2014-2015

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Our children are our greatest treasure. They are our future. Those who abuse them tear at the fabric of our society and weaken our nation. --

Nelson Mandela, National Men's March, 1997

EXECUTIVE SUMMARY

The 2014-2015 Orange County Grand Jury investigated the operations of the Child Abuse Registry (CAR), a division of the Social Services Agency (SSA), and found the rate of dropped calls to its hotline to be alarmingly high. A dropped call means that someone reporting the possibility of a child being abused or neglected hung up before talking to a social worker.

The Grand Jury found that the primary cause for dropped calls was the long waiting time experienced by the caller. There are peak times when the number of calls received in a short period of time exceeds the number of people available to answer them. Some callers choose to hang up rather than continue to remain on hold. Of particular concern are callers, such as neighbors or family acquaintances, who may have mixed feelings about getting involved in the first place. If they hang up in frustration because no one is responding, they may never call again. This could result in a child being left in jeopardy, and ultimately harmed or even suffering fatal injuries.

Many of the SSA and CAR staff interviewed, from upper management to phone answerers, were extremely concerned about the high rate of dropped calls. Several reasons given for the growing dropped call rate were explored by the Grand Jury. Whatever the reason, CAR has an admittedly unacceptable outcome: many reports of child abuse not being heard. This problem will never be solved on a long-term basis until creative strategies are developed and implemented by CAR and SSA. Ultimately, the key to serving call-in reporters is for management to commit to having staff do whatever is reasonably necessary to improve responses to incoming calls.

BACKGROUND

The first child abuse reporting law in California was enacted in 1963. Under the original law, the only people required to report child abuse were physicians. At that, physicians were only required to report *physical* abuse. Over the years, numerous amendments have expanded the definition of child abuse and the persons required to report. Today, a variety of professionals, designated as “mandated reporters” (see Appendix A), are required to call in suspicions of child abuse, including physical, psychological, and sexual abuse, as well as neglect (see Appendix B for legal definition of child abuse). Also, members of the public are encouraged to call in suspicions, even if they prefer to remain anonymous.

In 1974, the Orange County Board of Supervisors established CAR to centralize the reporting of child abuse within Orange County. On February 1, 1975, a 24/7 hotline was established to receive reports of child abuse. CAR is often the first point of contact

the community has with SSA, and it is the primary point of entry into Child Protective Services (CPS).

Since that time, there have been at least four separate Grand Jury reports on this topic. Over 20 years ago, a report was issued on CAR stating in part, "According to figures provided by the Registry between January and November of 1993, twenty-five percent of the 46,313 calls placed to the Registry were never answered because callers hung up" (OC Grand Jury, 1993-1994, p. JS/E-3). Regrettably, the dropped call rate remains unacceptably high.

Since its inception, CAR has experienced a steady increase in the number of callers and staff. Today CAR is a sophisticated and critical component of SSA, one of the key organizations responsible for protecting our most vulnerable residents from abuse.

REASON FOR THE STUDY

SSA management informed the Grand Jury that CAR refers for follow-up investigation only about half of the calls it receives. The Grand Jury wanted to know if there were a significant number of cases that were not referred but, based on more thorough information, should have been. After a lengthy initial investigation, the Grand Jury determined that the CAR processes and procedures were effective, and in virtually every case that was reviewed, the Grand Jury found that a reasonable and reliable decision had been made by the social worker.

What was discovered during the course of the initial investigation, however, was that a disturbing number of callers hung up before a report could be made. Consequently, the Grand Jury changed the focus of the investigation to the causes of, and potential remedies for, the dropped calls.

The purpose of any 24/7 hotline is to give immediate attention to something that is dangerously wrong and cannot wait or go unanswered. The most obvious example of such a hotline is the 9-1-1 emergency lines manned by law enforcement or fire departments. Though every call may not be a true emergency, every call has the potential of averting or rectifying a situation that could result in the injury or death of an innocent victim. For this reason, a near-zero percent dropped call rate is the only acceptable level for 9-1-1 managers.

CAR also deals with potential crisis situations. People call CAR to report children or dependent adults who are being beaten, isolated, constrained, starved, sexually abused, or neglected. Both children and elders are vulnerable to emotional harassment, disparagement, or bullying at the hands of those expected to protect them. If unchecked, these abusive situations can lead to injuries, illness or death. In addition, emotional trauma could lead to long-term mental illness or suicide. On the other hand, if every phone call were answered as it was in the case described below, these physical or emotional scars might be avoided.

In July of 2013, an unidentified member of the public called CAR and reported his suspicions that a child might be confined in a cage in a family home in Anaheim. The

available CAR worker answered the phone and handled the call according to policy. A social worker was sent to the home to verify this, and within 24 hours, the police removed the child and his siblings (and the cage) from the home. The parents were charged with child abuse and put into the justice system (Schwebke, 2014).

The above described outcome was accomplished because a concerned person called CAR and someone answered the phone. The Grand Jury questions what would have happened if this caller had been one of those people who got frustrated with a long wait and hung up. The Grand Jury decided to further investigate and analyze the Child Abuse hotline operations based on the background facts and initial investigations.

METHODOLOGY

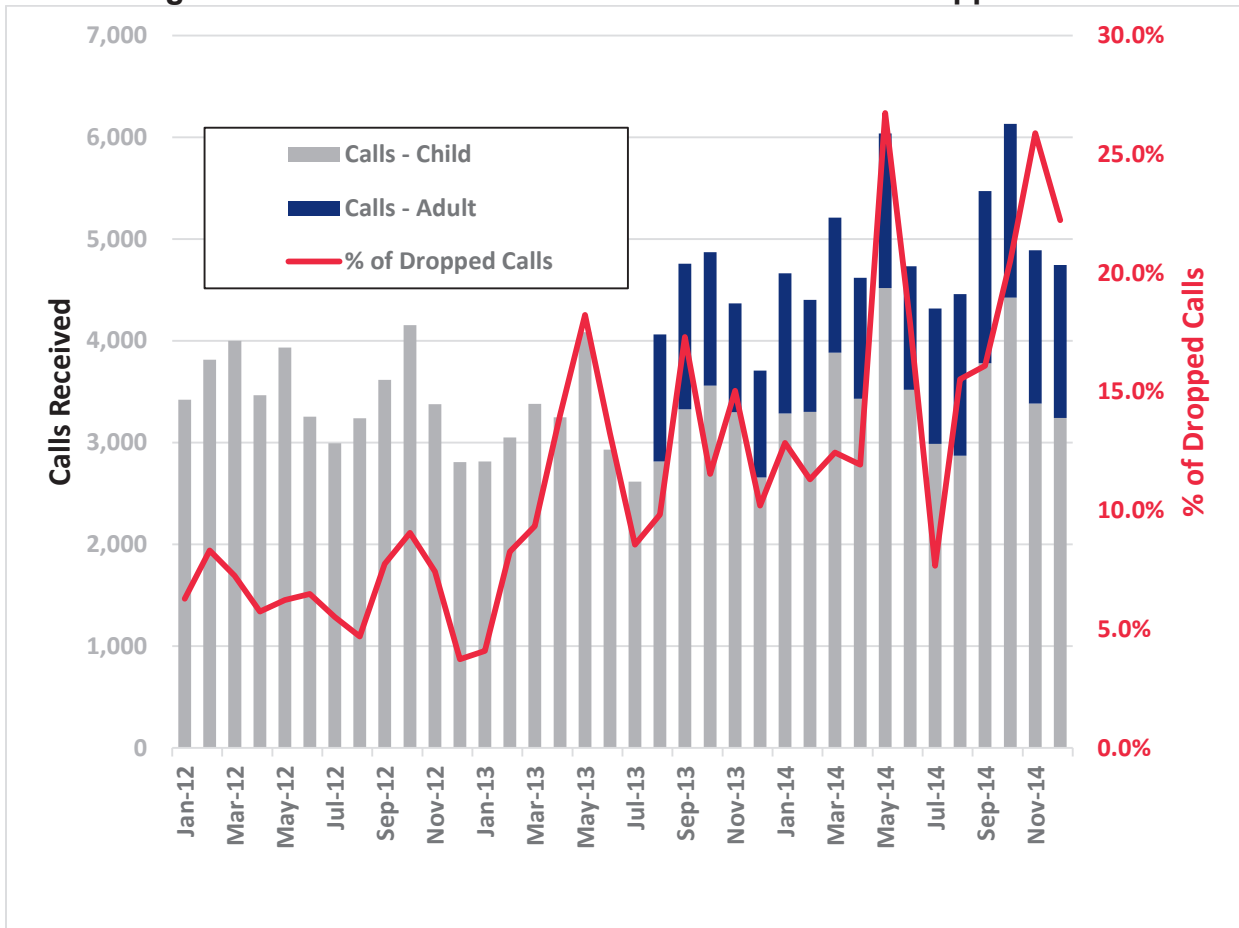
For this investigation, the Grand Jury obtained copies of the Child and Family Services (CFS) Operations Manual, specifically as it relates to CAR; interviewed hotline Senior Social Workers, Supervising Senior Social Workers, and managers; visited the CAR facility on numerous occasions; and sat with hotline social workers to observe them answer calls. The Grand Jury also interviewed supervisors and managers from Child Protective Services CPS of adjacent Southern California counties. Many of the information sources for this investigation are listed in Appendix C, at the end of this report.

INVESTIGATION AND ANALYSIS

CAR Dropped Calls: Bad—and Getting Worse

The number of dropped calls has long been a concern of CAR and prior Grand Juries. The 2014-2015 Grand Jury found that the percentage of dropped calls has increased significantly during the last couple of years. (See Figure 1)

Figure 1: 3 Year Trend in Calls Received and % of Dropped Calls



Data supplied by CAR

The data indicates that, prior to 2013, the monthly dropped call rates were in a range of 5% to 8%. Interviews with CAR staff confirmed that those rates were typical in prior years. This report discusses a number of possible causes for the dramatic increase in dropped call rates during 2013 and 2014, and recommends some short-term and long-term remedies. The Grand Jury believes that a reasonable immediate goal for these efforts would be to return to the pre-2013 levels of under 5%. An unknown percentage of callers hang up immediately after the call registers, which is recorded as a dropped call. Once the CAR understands the percentage of calls in that category, the ultimate goal should be a drop rate only nominally higher than the immediate hang-up calls rate.

Almost every social worker and manager at CAR cited dropped calls as a major problem. Executive management at SSA expressed great concern that a caller into the abuse hotline would have to wait for an extended period. They also confirmed the belief that long wait times lead directly to dropped calls, as the data provided confirmed (see Figure 2).

Figure 2: Wait Times and Dropped Calls



Data supplied by CAR

Contributing Factors to Long Wait Times

CAR social workers and managers provided various explanations for long wait times. These included the following contributing causes:

Documentation of “Information Only” Calls from All Mandated Reporters

An Information Only (I/O) call is one where the hotline social worker determines that the situation reported does not rise to the level of abuse, and makes no referral for investigation. Prior to 2013, CAR policy did not require I/O calls to be recorded in the client data. However, the policy was changed in the spring of 2013. Now hotline workers are required to document all calls from mandated reporters. According to the hotline workers, this change in policy required more time to document the I/O calls, taking time away from responding to waiting callers.

Annual Increase in Volume of Hotline Calls

The total number of calls coming into CAR increased from 43,888 in 2013 to 59,676 in 2014 (see Figure 1). While staffing levels also increased, the training needed to prepare new staff made it impossible to increase staff at the same rate as the increase in call volume.

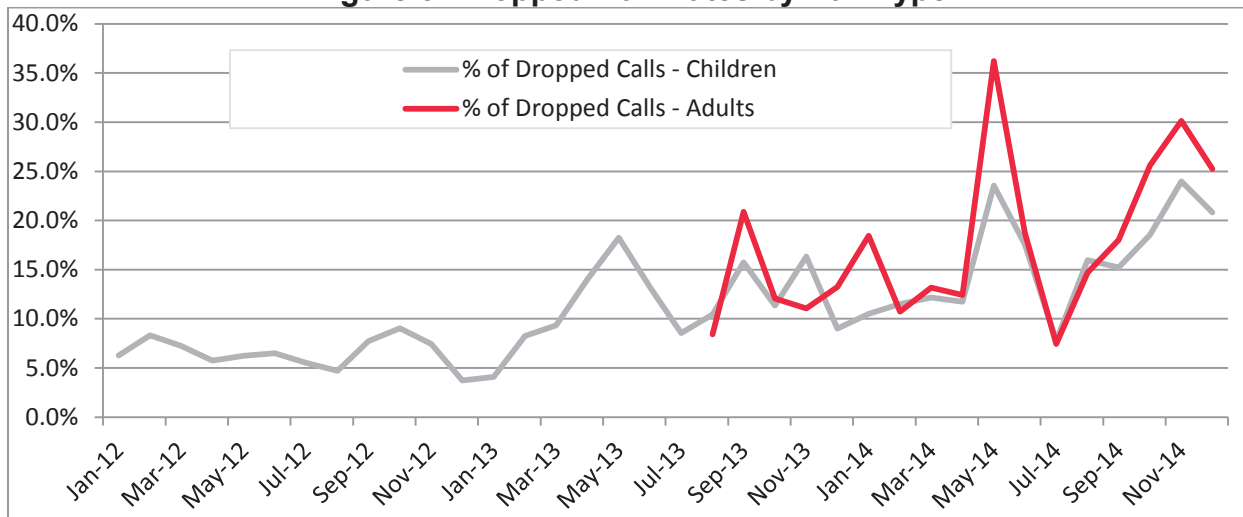
Merging APS with CAR

A major cause of the increase in volume was the merging of the Adult Protective Services (APS) hotline into the CAR hotline. Furthermore, the fact that both APS and CAR hotline workers take both adult and child abuse calls meant that both sets of hotline workers needed extensive cross training. Several social workers indicated that

combining APS with CAR was like mixing apples and oranges, with each job requiring a different set of skills. The training occurred from July 2013 through September 2014. During this period, workers were taken off-line for training, which put further demands on the remaining hotline workers.

To this day, APS workers reported preferring to take adult calls, while CAR workers reported preferring to take child abuse calls. Even after months of training, most social workers felt comfortable and competent when handling the type of calls they were used to handling, but slower and less sure when handling the other type of calls. By September 2014, management expected social workers to handle both types of calls. As Figure 3 demonstrates, since that time the dropped calls rate for adults is even higher than that for children. The Grand Jury concluded that when the CAR social workers are fully comfortable with handling the APS calls, and vice versa, the percent of dropped calls will be lower.

Figure 3: Dropped Call Rates by Call Type



Data provided by CAR

Duplication of Information on Required Hotline Documentation

A majority of hotline social workers interviewed by the Grand Jury reported that unnecessary additional time is required to fill out the intake forms with duplicate information. Some CAR managers indicated that investing in technology to reduce input duplication would allow more time to answer waiting calls. The fact that the information entered is documentation for a combination of mandated forms may complicate the ability to eliminate this duplication.

Need for an increase in staffing

CAR management and CAR social workers alike frequently cited understaffing as a major reason for dropped calls. During this investigation, CAR received additional funding and was in the process of hiring seven additional hotline workers and two additional supervisors. Some CAR managers expect the increased staff to have a major impact in addressing the high level of dropped calls.

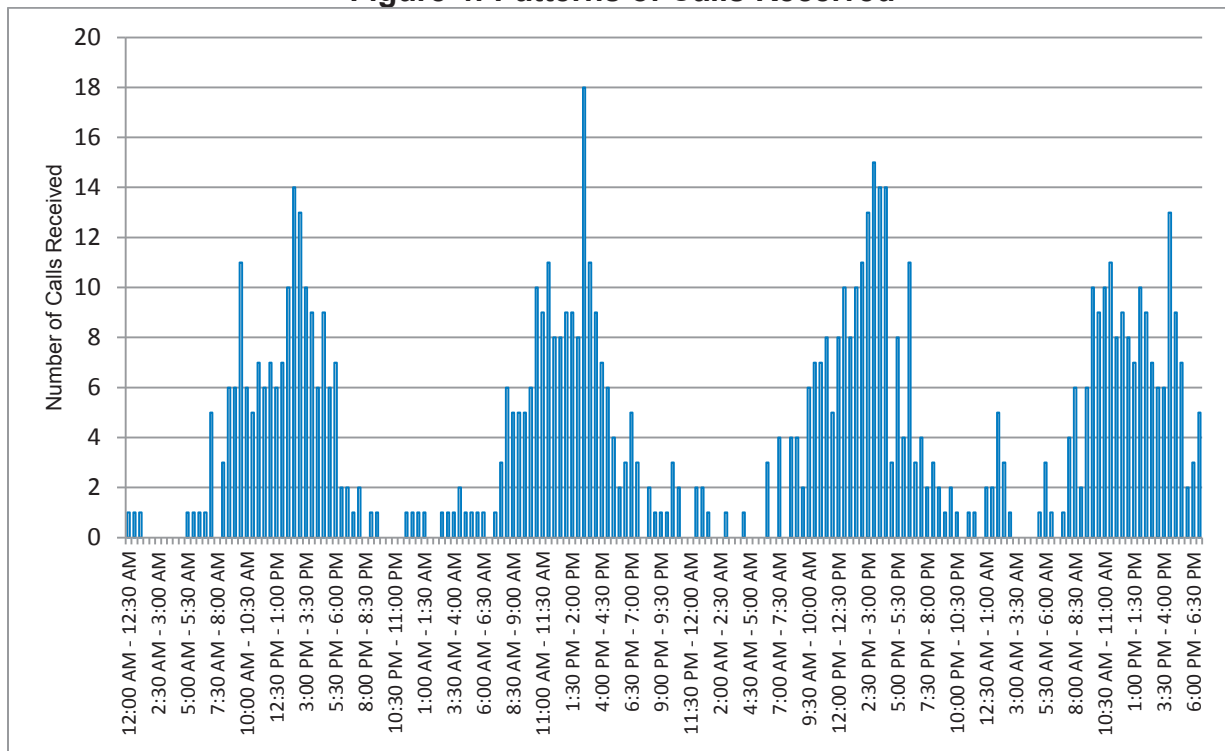
Root Cause: Lack of an Effective Strategy During Peak Call Periods

All of the above contributing factors are possible reasons for the dramatic increase in dropped calls during the most recent period from 2012 to 2014. However, the Grand Jury noted that the problem of high numbers of dropped calls dates back to at least 1994 when that Grand Jury issued a report dealing with the same issue. Since the 1994 report, CAR has installed a sophisticated new telephone system and hired additional staff. The percentage of dropped calls ebbs and flows, but the problem persists.

REPORT
4

Like all call centers, CAR phones are quiet for long periods, and then numerous calls will come in at the same time and overwhelm the system. Data from CAR's automated phone system shows this feast-or-famine pattern. Figure 4 reflects data provided by CAR, which they indicated reflected a typical four-day period. Staffing levels increase during predictable busy times between 9AM and 5PM. However within the busy times there are half-hour periods when CAR receives anywhere from zero to almost twenty calls. When there is no one available to answer the calls as they come in, wait times develop. If staff fails to immediately deal with the calls waiting, a high percentage of callers experience a wait even after the peak phone activity has subsided.

Figure 4: Patterns of Calls Received



Data provided by CAR

The Grand Jury discussed the challenge of reacting quickly to a spike in calls with the County 9-1-1 call center. The strategies they employ include the following methods:

- 1) Training call operators who are not on the phone to interrupt the work they are doing (including filling out forms) to take any waiting calls;
- 2) Having supervisors take any waiting calls if all operators are occupied on the phone; and
- 3) Sending waiting calls to clerical staff for the sole purpose of determining the level of urgency of the call, and taking appropriate steps based on that evaluation.

In many organizations, when work groups identify chronic areas of concern, it is common to see charts on the wall reflecting the data on the issue and the progress toward improvement. When upper management has concerns about a critical work issue, they insist on regular updates on the strategies that supervisors are trying and the results of the improvement efforts. The Grand Jury found no evidence of these management activities in addressing CAR dropped calls and long wait times.

A picture of the work environment in CAR was consistently reported during the interviews. In rough numbers, the productive social worker takes approximately one call per hour. The average call varies greatly in length but averages around 15 minutes. The amount of time required to complete the history investigation, decision-making process, documentation, and referral to the appropriate agency, takes about 40 minutes per call. Given those approximations, about 1/3 of the available staff would be on the phone and about 2/3 of the staff would be off the phone doing the post-call work at any given time. Supervisors spend most of their time off the phone, often in consultation with a social worker.

Understandably, people who are focused on the work at hand do not like to be interrupted to handle another responsibility. If supervisors do not insist that lower priority tasks be interrupted for higher priority tasks, most employees will opt to continue the work they are doing. The County 9-1-1 call center overcomes this phenomenon with intensive training to successfully prioritize and multitask during those peak times when it is needed. This strategy does not work if some individuals take waiting calls while others do not. If a small group of workers decided to take the waiting calls whenever they occurred, they would soon be swamped. If everyone is organized to be equally tasked with taking the waiting calls even if they are already occupied, it works, and nobody's workload is dramatically impacted. But this approach requires active orchestration and supervision.

CAR management is concerned that having a social worker interrupt his or her work to take a waiting call will compromise the quality of the report. However, social workers have the ability to replay the original call if needed to ensure the accuracy of the facts. Some supervisors expressed concern that some of the social workers were poorly equipped to handle the level of multitasking needed and that only those who "felt comfortable" doing it should try. Supervisors are rarely asked to put aside their current task, no matter how mundane it might be, to answer a call from the waiting list.

If the caller hangs up, CAR will never know what type of call it was. The call could have been only an I/O call, but then it very well could have been a call warranting immediate action. It is hard to reconcile the lack of aggressive management action to fix

the root cause of dropped calls with the purported level of concern expressed about their high occurrence.

FINDINGS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled “Child Abuse Hotline – Unanswered Cries for Help,” the 2014-2015 Orange County Grand Jury has arrived at seven findings, as follows:

- F.1.** Since 2012, the percentage of dropped calls has increased significantly to an unacceptable level.
- F.2.** Significant improvement in dropped call rates is a reasonable expectation because during the last three years, there have been months when the Child Abuse Registry achieved dropped call rates in the range of 5%-7%.
- F.3.** The new requirement to document all Information-Only calls from mandated reporters contributed to increased waiting time on Child Abuse Registry calls because most social workers do not answer waiting calls while doing the additional documentation.
- F.4.** The volume of child abuse calls coming into the Child Abuse Registry has significantly increased, which necessitates changing management strategies for dealing with the increased amount and complexity of the activity.
- F.5.** The Adult Protective Services hotline was absorbed into the Child Abuse Registry. Most social workers interviewed reported that they felt competent and enjoyed taking the calls for the agency from which they came (child or adult), but still felt unsure, slower, and less confident taking calls for the other agency.
- F.6.** Hotline social workers are required to input the same repeated data on multiple forms for the same call. Manual data entry is duplicated, which requires additional time away from being available to take waiting calls.
- F.7.** CAR management does not appear to have specific policies or strategies for dealing with peak periods when there are long wait times and high dropped call rates.

RECOMMENDATIONS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled “Child Abuse Hotline – Unanswered Cries for Help,” the 2014-2015 Orange County Grand Jury makes the following four recommendations:

- R.1.** The Child Abuse Registry should examine the feasibility of utilizing an abbreviated report for mandated Information-Only calls to expedite completion of these reports, thus freeing up the hotline worker to take waiting calls. **(F.3.)**
- R.2.** Additional training of all Child Abuse Registry social workers should continue until all workers feel equally competent taking both adult and child calls. While training is disruptive and time consuming, the formal training should continue as a priority. **(F.5.)**
- R.3.** All documentation completed by hotline social workers should be examined with the goal of eliminating redundancies in order to allow quicker completion of the paperwork, thus freeing up social workers for waiting calls. **(F.6.)**
- R.4.** The Social Services Agency and the Child Abuse Registry should become more proactive in addressing the excessive number of dropped calls and establish strategies and policies to reduce the dropped-call rate with an initial goal of returning to less than 5%. A partial list of strategies that could be considered for dealing with spike volume periods include:
 - a) training and requiring staff to multitask (taking a waiting call prior to completing the post-call work on the previous call);
 - b) designating supervisors to answer waiting calls; and
 - c) specifying staff members to triage calls to determine the level of urgency and potentially taking a message for call-back.

(F.1., F.2., F.4., F.7)

REQUIRED RESPONSES

The California Penal Code section 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected official shall comment on the findings and recommendations pertaining to the matters under that elected official’s control within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code section 933.05, subdivisions (a), (b), and (c), provides as follows, the manner in which such comment(s) are to be made:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section 933.05 are required from:

Responses Required

Orange County Board of Supervisors: F.1., F.2., F.3., F.4., F.5., F.6., F.7., R.1., R.2., R.3., R.4.

Responses Requested:

Social Services Agency: F.1., F.2., F.3., F.4., F.5., F.6., F.7., R.1., R.2., R.3., R.4.

COMMENDATION

The Grand Jury wishes to commend all of the CAR managers and social workers who were interviewed during the course of this investigation. Their responsiveness to requests for information and coordination of interviews facilitated the work of the Grand Jury. The commitment to their work in addressing the difficult task of preventing child abuse was most notable.

APPENDIX A - MANDATED REPORTER DEFINITION

“A mandated reporter is a person who is required to report knowledge or reasonable suspicion of child abuse which is obtained while acting in a professional capacity or within the scope of his or her employment.” (CFS Operations Manual, 2014, p. 4).

Pursuant to the California penal code, mandated reporters include:

- teachers and school staff
- social workers, psychologists and therapists
- child (day) care workers
- peace officers, firefighters, and emergency management staff
- physicians, nurses, and hospital personnel
- clergy and religious organization workers
- alcohol or drug rehabilitation counselors
- Staff/volunteers for private organizations having direct contact with children.

(for a complete listing, see Penal Code section 11165.7)

APPENDIX B - LEGAL DEFINITION OF CHILD ABUSE

Under the law, when the victim is a child (a person under the age of 18) and the perpetrator is any person (including a child), the following types of abuse must be reported by all legally mandated reporters:

- A physical injury inflicted by other than accidental means on a child. (P.C. 11165.6).
- Child sexual abuse including both sexual assault and sexual exploitation. Sexual assault includes sex acts with children, intentional masturbation in the presence of children and child molestation. Sexual exploitation includes preparing, selling or distributing pornographic materials involving children, performances involving obscene sexual conduct and child prostitution. (P.C. 11165.1)
- Willful cruelty or unjustified punishment, including inflicting or permitting unjustifiable physical pain or mental suffering, or the endangerment of the child's person or health. (P.C. 11165.3). "Mental suffering" in and of itself is not required to be reported. However, it may be reported. (P.C. 11166[b]).
- Unlawful corporal punishment or injury, willfully inflicted, resulting in a traumatic condition (P.C. 11165.4) .
- Neglect of a child, whether "severe" or "general," must also be reported if the perpetrator is a person responsible for the child's welfare. It includes acts or omissions harming or threatening to harm the child's health or welfare. (P.C. 11165.2) (CA codes).
- Any of the above types of abuse or neglect occurring in out-of-home care. (P.C. 11165.5).

APPENDIX C - ADDITIONAL SOURCES FOR INVESTIGATION

1. Interviews of managers from:
 - LA County Department of Children & Family Services
 - Ventura County Child Protective Services
 - Riverside County Children Services Division
 - San Bernardino County Children and Family Services
 - San Diego County Child Protective Services
 - Santa Barbara County Child Protective Services
2. Documents: CA Department of Social Services; Child Welfare Services/Case Management System (CWS/CMS) pp. 1-3.
3. Child and Family Services Operations Manual: Child Abuse Registry, Number M0109.
4. Review of random sample of 100 cases of the 2203 that were initially not referred for investigation but at a subsequent hotline call, were referred, mostly as a 10-day referral (a referral where the social worker must visit home within 10 days).
5. CAR graph presenting total number of calls, number of reports, number of dropped calls, and number of reports for the period from January 2013 to July, 2014.
6. Child Abuse Registry Interval Report from October 6, 2014 to October 9, 2014 indicating calls answered, longest waiting times, number of dropped calls, and total calls answered.
7. Summary of California Child Welfare Services: Report 2013-110 Summary-April 2014. (Audit of Butte, Orange, and San Francisco County.)
8. California State Auditor's Report: Child Welfare Services. Report #2013-110 (Full Report.). April, 2014.
9. Interviews with staff members at all levels of the Child Abuse Registry and the Social Services Agency.
10. Interviews with child and adult abuse hotline social workers.
11. Review of Structured Decision Making (SDM) assessment tools (documents).
12. Interview of supervisors/managers of Child Protective Services Divisions of Los Angeles, San Diego, Riverside, Santa Barbara, Ventura, and San Bernardino.
13. Review of OC CAR website discussion on "Abuse Report." Retrieved from <http://ssa.ocgov.com/abuse/>.
14. Review of CFS Operations Manual Sections on:
 - Sexual Abuse Allegations-Child Abuse Registry (CAR) Number: A-0205
 - Structured Decision-Making, Number:D-0311 (SDM).
 - Standard Operating Procedures (SOP), Number: B-0216
 - SOP: Required forms
 - Team Decision-Making, Number: 0308
 - Abuse Investigations-Practice Guidelines, Number, A-0412
15. Human Services Committee members sat in with Senior Social Workers to observe as calls came into the hotline.
16. U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau (2003). *Decision-making in Unsubstantiated Child Protective Services Cases*. Washington, DC.

17. Virginia Board of Social Sciences (June, 2009). *Adult Protective Services Minimum Training Standards*.
18. Review of past Grand Jury Reports
 - 1993-1994, Child Abuse Registry
 - 2003-2004, A Child At Risk: Missed Opportunities To Save a Life
 - 2005-2006, Improving Child Abuse Response
 - 2006-2007, Death By Abuse: One Death is Too Many

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<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=11001-12000&file=>
- California Child Abuse & Neglect Reporting Law, Condensed Version, 2006. P1
- CFS Operations Manual, 2014 M-0109, Child Abuse Registry (CAR).
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ORANGE COUNTY REAL ESTATE: DO THEY KNOW WHAT THEY HAVE?



GRAND JURY 2014-2015

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EXECUTIVE SUMMARY

To what extent does Orange County effectively manage both buildings and land? The Board of Supervisors attempted to answer this question in December of 2012; they voted to enhance the real estate management capabilities by creating a County Real Estate Officer and requested a study by the County Executive Officer of the status of County real estate. The requested study was never completed.

The Grand Jury investigation revealed that the County has several partially complete and/or partially updated databases of its real estate holdings. This collection of real estate databases is not comprehensive or compatible in content, or consistent in data and accuracy. The Grand Jury concluded that there is not a complete, accurate County real estate database. The Grand Jury believes that such a database is necessary for the County to make optimal and efficient real estate management decisions. With the potential for future real estate decisions being based on unavailable or inaccurate data that could lead to less-than-desirable stewardship of County's tax dollars, the Grand Jury believes that comprehensive and compatible real estate data information is necessary. The Grand Jury has discovered no evidence of any urgency by the County in implementing such a real estate database.

BACKGROUND

The Grand Jury found that there are approximately 2,300 real estate properties that Orange County (the County) has the duty to manage in a fiscally responsible manner. This total includes real estate holdings that are owned by the County, as specified by information provided by the offices of the Orange County Assessor and the Orange County Auditor-Controller. It also includes 98 properties that are leased by the County, per information provided by the Orange County Public Works Department (LA Consulting, 2012). While the Grand Jury cannot determine the current market value of the County's property, a report from Alliant Insurance, which insures the County's buildings, lists the valuation of the County's insured buildings at \$1.7 billion (Alliant, n.d., p. 128). The Grand Jury was unable to find a source of valuation for the County's unimproved or undeveloped land.

The Orange County Board of Supervisors (BOS) has recognized the need to maximize the use and improve the use, management, and oversight of Orange County real estate. At the December 18, 2012 BOS meeting, the supervisors directed staff to commence recruitment for an executive real estate position. A Chief Real Estate Officer (CREO) who reports to the County Executive Officer (CEO) was hired in June 2013 to direct the Corporate Real Estate Section (Orange County Executive, 2014). At that same BOS meeting, the BOS directed the CEO to examine the status and functionality of County real estate policies, practices, controls, and to deliver a completed study to the BOS, with options and recommendations, within 120 days (Orange County BOS, 2012, p. 8).

The Grand Jury was interested in reading the information in this real estate report; however, there was no evidence that the report was ever prepared or delivered to the BOS. Upon further inquiry, several County employees mentioned that this report was never written.

During Interviews with staff from the offices of the County CEO, CREO, and Public Works, the Grand Jury learned that management of County real estate was previously the responsibility of Public Works. The newly created CREO position took on responsibility for overall management of County real estate. Under the CREO, the Corporate Real Estate Department is currently staffed with experienced individuals from Public Works and from the real estate profession (Orange County Executive, 2014).

REASON FOR THE STUDY

The Grand Jury found several news articles claiming the federal government had apparent deficiencies in managing its real estate. One article reported that there were nearly 80,000 federally owned properties that are either completely unused or sorely underutilized which could be costing taxpayers upwards of \$1.7 billion in annual upkeep costs (Ingraham, 2014). Another article estimated that the federal government had 14,000 “excess” buildings that were no longer needed (Flock, 2012).

The Grand Jury was concerned about the assertions in these articles and wondered if the County was as wasteful as the federal government with regard to real estate management. The Grand Jury was interested in determining to what extent management of Orange County’s real estate may have deficiencies that could be wasting County taxpayer dollars. The Grand Jury believed that an investigation into this area would be informative to both County officials and taxpayers.

METHODOLOGY

The Grand Jury conducted an Internet search and interviewed County employees from the County Executive Office, County executive staff, department heads, and staff members of elected officials to obtain information on the state of County owned and leased real estate. The Grand Jury also interviewed members of departments that would have a need for real estate information. With consent of the interviewees, interviews were recorded to ensure accuracy.

The Grand Jury conducted a review of Board of Supervisors’ meeting minutes for real estate information, followed up on information and reports suggested in interviews, and requested relevant information from County departments. In addition, the Grand Jury reviewed the process for making a lease request and for presenting a lease agreement to the BOS for approval.

INVESTIGATION AND ANALYSIS

Comprehensive Real Estate Database

The Grand Jury began its investigation by conducting an Internet search of County real estate data. Despite the limited availability of meaningful public data regarding County real estate holdings, the Grand Jury expected that the County would have access to accurate and timely information on their real estate portfolio in order to make good management decisions. To the Grand Jury’s dismay, this was not the case.

The Grand Jury learned that a comprehensive, countywide accessible, accurate real estate database does not exist. Some County departments have real estate data,

but only on their portions of the County's property. Useful data, such as available square footage and the usage by square footage, were in many cases not available.

Comprehensive County real estate information was difficult to find. Interviews with staff from the offices of the CEO, CREO, Public Works, and County Assessor indicate that there is not a usable, consolidated real estate asset list or database available for use by County officials, departments, supervisors, and employees. County officials have indicated that the County previously used a real estate database, County Real Estate Database (also known as CRED), which was considered outdated, not fully maintained, and difficult to operate. The Grand Jury found that several departments in the County maintained their own databases; however, each database had limited data that was primarily related to the properties managed by the individual departments.

The Grand Jury found that the CREO looked into developing a real estate database for the County in the fall of 2014. However, implementation of that database was not initiated and was expected to take at least a year to complete. It appears that the development of this database was not a priority.

Existing Databases

County Assessor's Database

The County Assessor's database focuses on data pertaining to property tax assessment values. Since County-owned properties have a zero reported value, the market values are not identified, and the properties are not reviewed on a regular basis. The information available is limited to the property's location on a parcel map.

Auditor-Controller Database

The Auditor-Controller maintains a list of properties that contains buildings for depreciation purposes, which includes square footage, transactional values (original cost paid by the County for the property), and depreciated values. The Auditor-Controller property list does not include vacant land because the Auditor-Controller is only interested in depreciation expense, and vacant land is not depreciated. The Auditor-Controller reviews BOS meeting minutes to extract real estate data that it needs to update its database. However, if a County real estate transaction is not reported in the BOS meeting minutes, then the transaction's information might not be included in the Auditor-Controller's real estate database.

Sheriff-Coroner Database and Other Databases

A representative from the Sheriff-Coroner's office indicated that the Sheriff's Department manages real estate information on an Excel[®] spreadsheet. Risk Management has a list of buildings and valuations provided by an insurance carrier for underwriting reasons. As such, vacant land is not included in the Risk Management real estate list because it is not insured for loss (Alliant, n.d.). Finally, Public Works maintains a property database, but only with updated information that Public Works needs for maintenance purposes.

No Single Database

Based on the Grand Jury's review of selected County real estate databases and interviews with County employees, it is evident that the County maintains several real estate databases, but no single database exists with all of the necessary information for the County to make informed real estate decisions. What is worse, the data element fields within all of the various databases are not standardized. In addition, several data elements in some databases had not been updated and were inaccurate.

County Real Estate Data Inaccuracies and Deficiencies

The accuracy of existing Orange County real estate databases was also called into question. Based on an interview with a high-ranking County official, the Grand Jury determined that though this official seemed to believe that the County had adequate information as to what buildings the County owned and their occupancy, if the County was looking for additional available office square footage in sizes around 5,000 square feet, the County, in fact, would probably not have accurate information to successfully determine whether such space was available.

Based on discussions with other County officials, the Grand Jury determined that each County department was responsible for the updates and the accuracy of their individual databases. However, departments do not have access to a Countywide database. Many departments felt that their databases had questionable accuracy due to incomplete or missing information. Most agreed that having a comprehensive County real estate database would prove to be very helpful in making real estate decisions.

Discussions with key County executives revealed that each department had various levels of data in their databases. They noted that a more comprehensive and accessible real estate database would be very helpful. Many County executives agreed that a countywide database should be maintained and controlled by the CREO, with global access provided to all County departments.

Why a Comprehensive Database is Needed

Perceived Need.

Representatives from County agencies and departments have stated to the Grand Jury that there is a compelling need for a County-wide searchable database for its real estate. They have mentioned to the Grand Jury that such a database would be of value in carrying out County business tasks, such as:

- Determining maintenance responsibility for leased buildings;
- Searching for a suitable land site for a County department (e.g., a new animal shelter);
- Searching for additional office square footage for their department from properties owned or leased by the County;
- Deciding which properties are potential income producing property for the County; and

- To more accurately determine the amount of insurance coverage for buildings.

Improved Management.

Several officials mentioned situations in which County departments that were leasing office space from non-County lessors contacted Public Works to perform maintenance on the property. Because personnel from Public Works could not verify whether they were responsible for maintenance on the property, Public Works went ahead and performed the maintenance. This represents a waste of County resources and funds since the maintenance in this situation is the responsibility of the non-County lessor.

Many of the County officials the Grand Jury interviewed stated that a database would be useful for a variety of reasons. These reasons included the following:

- Having an accurate and current status on all County properties
- Making judicious use of property in an efficient and effective manner
- Making leasing decisions
- Determining properties that are potentially income producing
- Selling off surplus properties

Utilization. The Grand Jury discovered that there were County buildings that were not being utilized; yet, the County has had to spend money on maintaining these unused buildings. There may be some legitimate reasons for temporarily maintaining unutilized buildings; but without sufficient data concerning the County's property, the County cannot arrive at intelligent decisions regarding use and disposition of these holdings.

Cost reduction. During its investigation, the Grand Jury intended to quantify the opportunity cost from past County real estate decisions based on its current database information. The problem is that it is impossible to surmise how the "better information" would have changed decisions, or what would have been the financial impact. However, the Grand Jury believes that it is a reasonable intuitive argument that better information or access to data would yield better (i.e., more cost effective) decisions. The cost of implementing an updated real estate database should be considered in deciding whether its implementation is justified. Based on the opinions of some of the interviewees in this investigation, it was believed that the cost to implement the upgraded database was not prohibitive based on its perceived payback period.

Leasing. The Grand Jury learned that the full extent of available office square footage in the County was unknown. This lack of information may cause the County to approve leasing additional square footage of office space from a new source, when existing County office space is already available.

Conclusions

Priority.

Creating this database does not seem to be a priority. Given the failure to deliver the real estate report requested by the BOS in 2012, and the recent change in the members of the BOS; the Grand Jury is concerned that this database project may also be placed on the “back burner” and never completed.

Development of Database.

The Grand Jury finds that a sense of urgency needs to be conveyed by the BOS regarding the implementation of systems that provide improved real estate information for the County. A relatively small investment in the suggested real estate data system would likely have an immediate payback by reducing any waste of County dollars on ill-informed real estate decisions. In addition, a comprehensive data system would save time searching for information.

Management and Control.

A database is only as good as the information it contains. An accurate database is essential to informed decision making. The Grand Jury concluded that accountability for database accuracy must be assigned to a position with the responsibility and authority for accuracy. An annual inventory and data review through each department is a good practice. Many managers that the Grand Jury interviewed concurred with the need for establishing and maintaining the accuracy of databases.

The Grand Jury concluded that developing a timeline that includes target completion dates for each database-development stage to acquire and to populate a real estate database is necessary to establish control measures, including an estimated completion date.

FINDINGS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of Real Estate in Orange County, the 2014-2015 Orange County Grand Jury has arrived at four principal findings, as follows:

- F.1.** While the Board of Supervisors has officially recognized the need to have comprehensive management of County real estate, there does not appear to exist any sense of priority or urgency in the County relative to the development of a complete, up-to-date database.
- F.2.** Management of County real estate assets is decentralized, and individual departments track property under their purview.

- F.3.** The County does not have a single, comprehensive, accurate real estate database with information that can be used by the County departments.
- F.4.** Having a comprehensive County real estate database would be beneficial in managing County real estate assets and support prudent decision making.

RECOMMENDATIONS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of Real Estate in Orange County, the 2014-2015 Orange County Grand Jury makes the following three recommendations:

- R.1.** The County should create a regularly updated database that includes information that will improve the stewardship of County real estate. This database should include a comprehensive, uniform list of data elements so that all County departments can benefit from its use. The Grand Jury recommends the following data items be included at a minimum:

1. Building address
2. Assessor's Parcel Number
3. Description of property
4. Date of acquisition
5. Building Number
6. Relationship to other properties, if appropriate
7. Property size:
 - a. Building square footage
 - b. Leased space square footage
 - c. Land square footage or acres
8. Condition of land or building (e.g., not suitable for building, not suitable for building occupancy, refurbishing, open land, reserved open space)
9. Occupancy and use of buildings by square footage
10. Non-occupied space by square footage
11. Ownership details, such as:
 - a. County of Orange owned
 - b. Owned under Orange County Flood Control District (OCFCD)
 - c. Leased to County by private owner
 - d. Leased to OCFCD by private owner
 - e. Leased to private party by the County of Orange
 - f. Leased to private party by the OCFCD
12. Contract terms for County income-generating property
13. Maintenance information, including responsibility
14. Lease terms, such as:
 - a. Start and end dates
 - b. Monthly lease payments

- c. Cost per square foot
- d. Restrictions
- e. Options
- 15. Is the property vacant land or open space?
- 16. Is the property not available for use? If so, why?
- 17. Transaction Value
- 18. Depreciated Value
- 19. Information on upgrades, remodeling
- 20. Insurance coverage
- 21. Environmental risks such as asbestos, underground storage tanks or soil contamination
- 22. Deed Restrictions

(F.2., F.3., F.4.)

- R.2.** The County should establish a person or position to be accountable for the ongoing accuracy of the real estate database. The County should also consider the feasibility of performing an annual inventory of the County's real estate to help to ensure the information in the database is accurate. (F.3., F.4.)
- R.3.** The County should establish a timeline with realistic deadlines for its project to create and populate a comprehensive real estate database. This timeline should include target completion dates for major stages of the project. (F.1.)

REQUIRED RESPONSES

The California Penal Code section 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected official shall comment on the findings and recommendations pertaining to matters under that elected official's control within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code section 933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding.
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

- (b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:
- (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.
- (c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a County agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section 933.05 are required from:

Responses Required:

Board of Supervisors (BOS): F.1., F.2., F.3., F.4., R.1., R.2., R.3.

Responses Requested:

County Executive Officer (CEO): F.1., F.2., F.3., F.4., R.1., R.2., R.3.

Chief Real Estate Officer (CREO): F.1., F.2., F.3., F.4., R.1., R.2., R.3.

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**AB109-REALIGNMENT: ARE THE
PUBLIC AND PROBATION OFFICERS
AT GREATER RISK?**



GRAND JURY 2014-2015

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EXECUTIVE SUMMARY

The Public Safety Realignment Act (AB109) resolved longstanding federal court orders regarding California State Prison overcrowding by transferring certain offenders to county jails and to county probation departments for supervision. The 2014-2015 Grand Jury investigation examined whether AB109 offenders pose a higher risk to the Orange County community or affect the safety of the probation officers in the Orange County Probation Department (OCPD) who supervise them.

After a lengthy investigation, the Grand Jury (GJ) assessed whether AB109 offenders present an *increased* danger to the community. The GJ found that danger has not statistically increased *as a result of AB109*. Although AB109 offenders do not have sexual, violent, or serious crimes in their most recent conviction, many have these offenses in their criminal histories. These offenders do pose a high risk of criminal behavior, especially in relation to property crime. The OCPD has placed a high priority on officer and community safety, as reflected by its stated goals. Adequate defensive tools have been provided to the probation officers, including firearms, batons, pepper spray, and protective vests. However, an intermediate tool with less than deadly force, an electronic control weapon (referred to as a Taser), is not currently provided.

AB109 offenders are at a higher risk for reoffending with 88% of them having a drug abuse history. Research has confirmed that intensive supervision combined with drug treatment does result in lower reoffense (recidivism) rates. The Grand Jury has concluded that Orange County does not have adequate residential drug treatment beds available for the number of AB109 offenders, thus limiting the use of this preventative solution.

BACKGROUND

Effective October 1, 2011, the Public Safety Realignment Act (AB109) (hereafter referred to as “Realignment”) redirected prison inmates whose last conviction was for offenses considered non-serious, non-violent, and non-sex registrants (also known as the “three-nons” or “non-non-non”) to local county jails. This legislation implemented one of the most dramatic changes in California criminal justice history. The aims of AB109, as stated in Penal Code section 3450, are to reduce recidivism and to increase public safety through evidence-based practices and data-driven strategies.

The Legislature sought to achieve these goals by encouraging local government—specifically counties—to strengthen their community corrections programs through improved supervision strategies and community-based punishment. Realignment under AB109 is based on the theoretical supposition that offenders are more likely to respond to community rehabilitation programs, which in turn, will facilitate successful re-integration into the community.

Previously, all felons sentenced to more than one year of custody were required to serve their sentence in state prison. Under Realignment, almost all felons convicted of non-non-non crimes now serve their time in county jail, even if sentenced to over a year in custody or with previous convictions for more serious, violent or sex crimes. On

the other hand, offenders whose last conviction was for serious, violent, and/or sex crime(s) will continue to serve their sentence in state prison. Armed state parole agents continue to supervise high risk, sexual, and violent offenders.

Under Realignment, the Orange County Probation Department (OCPD) became responsible for supervising two new categories of offenders: (1) those released directly into the community from state prison under post-release community supervision (PRCS, also known as PCS by OCPD); and (2) offenders that would have been previously sentenced to state prison for “non-non-non” offenses are instead sentenced to county incarceration followed by a period of mandatory supervision (MS) in the community. Thus, PRCS places realigned prisoners released from state prison under the direct supervision of county probation officers for up to three years (versus state parole). Under MS, the trial court imposes a sentence that is served in the county jail, followed by a period of community supervision (Realignment Report, 2013).

Each of California’s 58 counties has designated its local probation department as the agency responsible for PRCS and MS cases. With the two new categories of supervision, each deputy probation officer (DPO) can administer a range of sanctions if offenders violate the conditions of their PRCS or MS. These sanctions include issuing a simple reprimand, imposing additional special conditions, and increasing reporting requirements.

A new sanction gives DPOs the authority to arrest an offender and impose a short period of custody not to exceed 10 days in county jail (known as “flash incarceration”). Flash incarceration is a useful, intermediate sanction that is designed to get the probationer’s attention and shake him or her into compliance without unduly disrupting the probationer’s employment status or educational endeavors. The sanction of flash incarceration does not require court permission, and the probation department may impose it multiple times (Realignment Report, 2013).

Along with a new category of offender, the probation departments received very specific instructions about the new approaches to take with AB109 offenders. The new philosophical orientation now taken by California is expressed in the legislative findings set forth in section 3450 of the Penal Code. Following the County’s implementation of the law, the OCPD has received significant funding to help cover some, but not all, of the costs of implementing the state-mandated program. AB109 included a requirement that the Post-Release Community Supervision Plan be under the supervision of the OC Community Corrections Partnership Committee (OCCCP), consisting of the following executive voting members:

- Chief Probation Officer (Chair)
- Sheriff
- District Attorney
- Public Defender
- Assistant Presiding Judge (non voting)
- Health Care Agency
- A representative of city police chiefs in OC

The OCCCP is responsible for developing the realignment process in Orange County and provides regular reports to the Board of Supervisors on various components, including funding and programming (A Paradigm Change, 2012). Counties were afforded a great deal of discretion regarding their use of the state funding, and across California they varied in deciding how to allocate the monies provided by the State to compensate for the increased costs. Recidivism rates tend to be higher in those counties that emphasized enforcement strategies rather than rehabilitation strategies, such as treatment, transition, and reentry programs (Bird & Grattet, 2014).

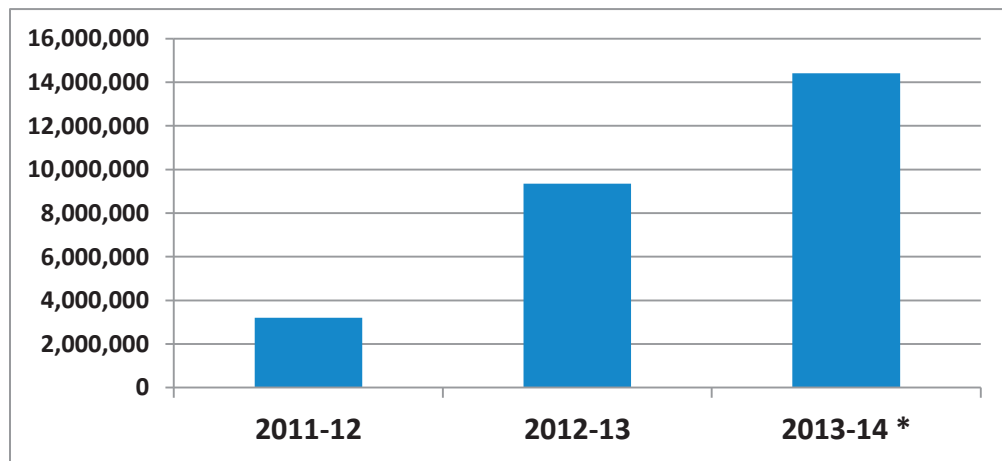
According to funding data provided by the OCPD, the agency's state funding allocation has increased substantially since implementation of AB109 as depicted in Table 1 and Figure 1.

Table 1: AB109 Funding Allocations

Fiscal Year	Probation Department AB109 Funding Allocation	Total County AB109 Funding Allocation	% of County Funding going to OCPD
2011-12	\$3,208,114	\$23,078,393	13.9%
2012-13	\$9,346,163	\$55,261,904	16.9%
2013-14*	\$14,415,013	\$73,512,720	19.6%

* After \$2.9M reallocation from OCPD to Sheriff's Dept.
(Orange County Community, 2014)

Figure 1: Probation Department AB109 Funding (\$)



*After \$2.9M reallocation from OCPD to Sheriff's Dept.
(Orange County Community, 2014)

The level of funding provided for the supervision of AB109 offenders allows the OCPD to implement a myriad of community and evidence-based practices that are intended to improve public safety, hold offenders accountable, and facilitate successful

reintegration—all consistent with the OCPD mission statement (see Appendix) and the goals outlined in the California Penal Code (California Penal Code sections 3450).

The OCPD has made several changes to adapt to the new requirements presented by the AB109 realignment. Separate organizational sections were established, with offices in Santa Ana, Anaheim, and Westminster. The creation of a Day Reporting Center (DRC) in Santa Ana provided a centralized resource facility for rehabilitation, education, and community transition services. The DRC, funded with AB109 monies, limits participants to either PRCS or MS offenders. The significant services include the following:

- Life skills and cognitive behavioral therapy
- Substance abuse counseling
- Anger management counseling
- Parenting and family skills training
- Job readiness and employment assistance
- Education services
- Community connections
- Restorative justice honors group
- Reintegration and aftercare

If the offender is required to participate in the DRC, failure to comply may result in an additional community sanction, such as an increase in supervision that may include additional classes, increased reporting, increased treatment, or possible flash incarceration (OC Realignment 2013 Update Report, 2013).

REASON FOR THE STUDY

AB109 significantly altered the type of offender supervised by the Orange County Probation Department. The release of state prison inmates to local supervision by county probation officers, rather than to supervision by state parole agents, has raised questions regarding whether they pose a greater risk to the community as well as whether they endanger the safety of probation officers who historically have not supervised state prison offenders. The scope of the study is limited to AB109 offenders within the five Realignment Units in the Division of PRCS of the OCPD. As of April - June 2014, there were approximately 2,547 AB109 cases being actively supervised by DPOs (See Table 2).

METHODOLOGY

The Grand Jury pursued several methods of investigation in order to understand the various aspects of the impact of AB109 on the Orange County Probation Department, the AB109 offenders, and the community at large. The Grand Jury reviewed a significant amount of literature on the subject as well as several research papers and governmental reports.

In addition, the Grand Jury examined a random set of AB109 files and reviewed the OCPD's policies and procedures. During this study, the Grand Jury made a site visit

to the OCPD's innovative and successful DRC in Santa Ana. The DRC is a "model" program where probationers gather to receive a variety of rehabilitative services to help and encourage rehabilitation and reintegration into the community.

Members of the GJ's Criminal Justice Committee also attended the AB109 Summit held at Concordia University in Irvine on October 10, 2014. Approximately 200 stakeholders attended this conference to review the status of AB109 in California generally and Orange County specifically. The Panel discussed a range of topics related to AB109 and how the legislation has impacted the community and various agencies like the OCPD, OCSD, and the DA's Office. Law enforcement personnel, judges, treatment administrators, and elected officials attended the half-day summit.

Interviews with numerous staff members of the OCPD and Health Care Agency (HCA) were an essential part of fact-finding for this report. Interviewees included an OCPD Executive, several supervising probation officers, eight field DPOs, OCPD support staff, and staff from the Orange County HCA.

INVESTIGATION AND ANALYSIS

AB109 Offenders Are Higher Risk Criminals – Profile of the Population

How do the AB109 probationers differ from the lower level offenders supervised by the OCPD prior to AB109? See Table 2 below for a brief overview of the Orange County AB109 offender population (cumulative). Note that PRCS offenders will transition from prison directly to community supervision. MS offenders complete a period of local incarceration prior to a period of community supervision.

Table 2: AB 109 Offenders

	PRCS	MS
Total released from prison	3,962	2,900
Actively Supervised	1,689	858
On active warrant	492	298
Sentenced but still in custody		306
Discharged pursuant to 3456(a)(3)	1,123	*
Other discharges/transfers	622	794
Office visits (cumulative)	5,579	*
Home visits	1,108	*
Search and seizures	2,018	*
Urine tests collected	1,554	*
Positive urine tests	307	*
Arrests	327	*

Source: 2014 Realignment Quarterly report (April-June 2014)

*Data not available

Section 3456(a)(3) noted on table 2 allows for the offender to be discharged if he or she has been on postrelease supervision continuously for one year with no violations of the conditions that result in a custodial sanction. When the Grand Jury interviewed probation officers, it was often reported that AB109 offenders were more sophisticated than regular probationers, and that most had extensive criminal records—some for serious, violent, and/or sex offenses.

During this inquiry, the Grand Jury randomly selected 10 AB109 offender files from the file drawers at the Main Street Probation Office. A close review of these files reinforced the description and characteristics identified in the Orange County Alignment 2013 Report. Most of the case files contained histories of long-term drug abuse, long prior records, multiple violations—most often associated with their substance abuse—and assessment scores substantially above the base score of 21 designating “high-risk” supervision.

The designation for a “high-risk” offender is a score of 21 or higher. The OCPD classifies each probationer on the basis of risk and needs, with the first score signifying risk and the second assessing needs. Observing risk scores for the sample cases reviewed, the GJ identified scores of 29/27, 26/34, 29/25, 33/32, 27/46, and 33/26. These scores are substantially higher than the minimal level for classification as high risk. In the cases cited, some AB109 offenders score as much as 12 points above the minimal score for high risk. The October 2011 Validation Study of the OCPD’s risk-

assessment instrument lists low risk offenders with scores from 0-8, medium risk, 9-20, and high risk 21 or greater. A maximum score for high-risk offenders is not contained in the re-validation study. However, it is noted that the range for minimum is 8 points, while the range for medium is 11 points. The Grand Jury observed that some of the risk scores noted in the cases were reviewed had a spread of as much as 12 points (21-33).

These elevated high-risk scores would seem to justify a classification of “intensive”—the highest designation used by most probation and parole agencies. PRCs cases had an average risk score of 26.9 (27). These scores reflect that AB109 offenders experience both very high needs and pose a high risk to the community. They require both a high level of services and a high degree of supervision and surveillance, it could be argued, however, that those scoring higher than 26 warrant intensive supervision.

Is the Community at Greater Risk Because of AB109?

Statistics collected by the FBI for 2013 demonstrated decreases in both property and violent crime nationwide. It should be noted, however, that there are geographic variations and that some regions/cities saw an increase in the violent and property crime rates from June 2012 to June 2013. Preliminary figures released by the FBI reflect that throughout the nation, there was an overall 5.4% decrease in violent crimes compared to the same time between June 2011 and June 2012. Violent crimes include murder, forcible rape, robbery, and aggravated assault.

Property crimes in the U.S. also decreased 5.4% from January to June 2013. Property crimes include burglary, larceny-theft, and motor vehicle theft. The Western region of the country showed more modest decreases: 3.7% for violent crimes, and a meager 0.3% decrease in property crime. Irrespective of AB109, recent FBI data reflect that the national trend seems to be a modest, overall decrease in violent and property crime (LA Times, 11/6/2014)(FBI Crime in the United States, 2013).

Policymakers, the law-enforcement community, researchers, and the community at large have repeatedly raised the issue of community safety after AB109 realignment. To answer this question, however, perhaps one should ask whether AB109 offenders are re-offending at higher rates now that they are under the supervision of county probation officers instead of state parole agents. It should be emphasized that these offenders would have been released to their communities irrespective of whether or not AB109 was passed.

In searching for an answer to this question, the Grand Jury reviewed three research studies: the California Department of Corrections and Rehabilitation’s (CDCR) Realignment 2013 Report, the Public Policy Institute’s Report, Evaluating the Effects of California’s Corrections Realignment on Public Safety Report of 2012, and the Orange County Public Safety Realignment Report of 2013.

Table 3: CDCR Report Summary

CDCR Report	AB109 Offenders	Pre-2011 Parolees
Non-felony arrests	56.20%	58.90%
Felony arrests	42.90%	36.90%
New crimes convictions (non-felonies)	21.00%	20.90%
New crimes convictions (felonies)	58.10%	56.60%
Return to Prison	7.40%	32.40%

(CDCR, 2013).

The CDCR Report (summarized in Table 3) found that AB109 offenders were arrested at a slightly lower rate than those paroled prior to October 1, 2011 (56.2% vs. 58.9%), but that the arrests of AB109 offenders were slightly more likely to be for a felony than the arrests of those paroled before October 1, 2011 (42.9% vs. 36.9%). The felony arrests for AB109 offenders were most often for non-violent crimes involving drugs or property. Convictions for new crimes by AB109 offenders were at almost the exact same rate as for crimes by pre-October 2011 offenders (21% vs. 20.9%). AB109 offenders returned to prison at a significantly lower rate than those offenders paroled prior to October 1, 2011.

This, of course, was a major goal of the legislation: to address violations using community alternative sanctions rather than a return to custody. After implementation of AB109, nearly all of the AB109 offenders who were returned to state prison did so only upon conviction of a new, serious crime, rather than being returned for a mere technical violation of a probation condition (99.9% vs. 0.1). Again, this was a major goal of the legislation (Realignment Report, 2013).

The Public Policy Institute of California (PPIC) concluded that there have not been significant changes in re-arrests and re-convictions for AB109 inmates released to the supervision of county probation departments. For AB109 offenders, felony re-arrests increased only 4.7%, and felony convictions increased a mere 1.9%. Interestingly, the PPIC study found that recidivism rates tended to be higher in those counties that emphasized enforcement strategies rather than treatment and reentry policies.

The Orange County Realignment Report (2013) found that 27% of PRCS probationers and 31% of MS probationers had convictions for new crimes. These county conviction percentages are slightly higher than those reported in the statewide CDCR Report (27% vs. 21%). However, the PPIC Study reports no significant changes in re-arrests and re-convictions among AB109 offenders.

More recent data from the FBI Uniform Crime Reports statistics quoted in the Orange County Register (Hernandez, OC Register, 2014), Los Angeles Times (Rubin & Poston, 2014) and the FBI Crime Reports (2013) suggest that the national trend seems to be toward a modest decrease in both violent and property crimes.

In November, the Orange County Register (Hernandez, OC Register, 2014) reported that violent crime has been on the downturn for years, but that several cities in Orange County saw property crime increase in 2011 and 2012. In 2013, however, that upward trend reversed itself when 25 of the 29 Orange County cities that submit data to the FBI saw a decrease in property crime. The most significant decrease was in Santa Ana, where violent crime and property crime dropped 16% and 13%, respectively. The most populous city, Anaheim, saw violent crime drop by 12% and property crime by 5%. Still, not all cities experienced decreases in the crime rate. Garden Grove, Huntington Beach, and Orange saw increases in violent crime (Bird & Grattet, 2014).

A cautious conclusion to be drawn from these studies is that AB109 offenders have not posed an *increased* risk to the community. However, this conclusion is no cause to rejoice. AB109 offenders—whether released to the supervision of state parole agents or county probation officers—were, and continue to be, high-risk offenders that pose a danger to the community, especially relating to property. All AB109 offenders are under supervision for a felony, and 94% have had one or more probation violations. Ninety-five percent have had a least one prior felony conviction, and fully 88% of AB109 have a drug history (Realignment Report, 2013).

Using a validated risk/needs assessment instrument, 91% of offenders are determined to be high-risk and likely to re-offend. A low risk score falls between 0-8, while a medium risk score is 9-20, or an eleven point spread. Ninety-one percent of AB109 PRCS offenders had risk scores between 21.9 and 27.

Thus, the Grand Jury concludes that, while there is scant evidence of any greater risk to the community because of the passage of AB109, the offenders released to county probation supervision on a daily basis continue to re-offend in significant numbers. Intensive supervision coupled with a high level of rehabilitative services is required to minimize their danger to the community. Research has consistently found that intensive supervision and sanctions alone do not affect the recidivism level of these high-risk offenders. Instead, the research has repeatedly found that intensive supervision combined with treatment results in lower recidivism rates (Skeem & Manchak (2008). According to interviews with probation staff, as well as a review of the programs available to AB109 offenders, the OCPD appears to be making a significant effort to provide a variety of treatment programs and alternatives to incarceration, consistent with the intent of AB109.

The Grand Jury has identified several areas of concern during this investigation. An AB109 offender's last conviction must be for a non-violent, non-serious, and non-sexual offense in order to qualify for the benefits provided by AB109. The legislation does not prohibit an offender's eligibility based on prior violent, sexual, or serious convictions. Thus, although an AB109 offender's most current conviction must be non-violent, non-serious, and non-sexual, AB109 does not preclude him from having a prior

conviction for violent and/or sexual offenses. In fact, the AB109 sub-division at the OCPD has specialized AB109 caseloads for sex offenders, domestic violence, gangs, white supremacists, and members of the Mexican Mafia.

Another major area of concern identified by the Grand Jury was that AB109 offenders are generally long-term substance abusers. According to data obtained from the OCPD, many of these offenders are referred for drug, alcohol, or mental health assessments and treatment. A major risk factor among almost all AB109 offenders is substance abuse: 90% of MS cases have a substance abuse history, and 86% of PRCS cases have a drug history. Combining these two categories, fully 88% of the OCPD's Realignment cases have a drug abuse history. Furthermore, the two major factors that are most correlated with the risk of new criminal conduct in the risk assessment instrument are (1) prior probation violations, and (2) drug use problems within the past 12 months (OC Realignment Report, 2013). One can logically conclude that prior probation violations are frequently related to positive drug tests, failures to show for testing, failing to participate in drug treatment, drug-related arrests, and/or absconding due to a developing drug habit. Thus, the two are interrelated.

While residential drug treatment is the most intensive, and perhaps most suitable modality for AB109 substance abusers, the OC HCA restricted residential beds to 25 per month in October 2014. Many times during interviews, probation officers complained of the difficulty in getting their cases into residential drug treatment, pointing out concerns for public safety and rehabilitation of offenders. OC Health Care Agency (HCA) personnel confirmed the limited bed availability due to budgetary problems. This has created substantial problems for public safety since probation officers cannot refer the substance abusers for diversion into residential drug treatment. Without this option, the offender faces an endless cycle of prosecution, incarceration, and the potential for commission of new crimes to support drug habits. Most AB109 Probation Officers will make every effort to place offenders in residential drug treatment programs as an alternative to incarceration. Many substance-abusing offenders are motivated to enter treatment and/or persuaded that it is a more constructive alternative to further jail time. With the limitations placed on the number of AB109 substance abusers that can enter treatment, probation officers are often left without the critical and constructive alternative.

Have Appropriate Adjustments Been Made to Keep the Probation Officers Safe While Interacting with the Higher-level Offender?

A second area of this investigation was whether the OCPD has taken measures to ensure that county probation officers are equipped to safely supervise a more sophisticated and dangerous criminal population. The CDCR arms all its parole agents. In this study we examined the tools and resources provided to probation officers who supervise AB109 offenders.

The OCPD has taken a proactive approach as it "considers the safety of its employees and the public to be a primary concern" (Procedure Manual Item 1-4-119, 12/01/11, p.1). Pursuant to this Manual item, all probation officers conducting field

supervision “shall” have the following equipment and be trained regarding its proper use:

- Badge and identification
- Department issued hand-held radio (known as a Pak set)
- Handcuffs

Additional equipment available can include:

- Cell phone
- Protective Body Armor
- Probation identification clothing
- Flashlight
- Web belt
- Camera
- Protective gloves
- Custody vehicle/Leg restraints

Designated officers, including those assigned to supervise specialized caseloads of AB109 offenders, are authorized to have the following additional equipment:

- Expandable Baton
- Firearm

DPOs that supervise AB109 offenders are further required to carry Oleoresin Capsicum (Pepper) Spray

Regarding the authority to be armed, the OCPD will not order a deputy to carry a weapon. The DPO must request to be armed. Procedures, guidelines, and protocol for being armed are outlined in considerable detail in Procedures Manual item 1-4-107 (07/19/12).

An OCPD administrator (personal communication, October 9, 2014) indicated that out of 344 probation officers, 177 are field (supervision) DPOs. Of the 177 supervision officers, 82 carry a firearm, including all DPOs supervising PRCS AB109 offenders. No threats or assaults against DPOs have been recorded from October 1, 2011 to the present, nor has there been any incident involving the discharge of a firearm. However, it was noted that several of the officers in one unit had been threatened, resulting in the preparation and submission of approximately six "threat packets" that report the details of each incident for subsequent action and attention.

In Procedures Manual Item 1-4-119, the OCPD provides guidance via a "Field Safety Matrix" on how field officers should respond to high-risk situations or encounters. The matrix indicates that unaccompanied home visits that are routine and considered non-threatening are "OK" with DPO discretion. However, home visits with a DPO partner are strongly encouraged. Home visits by a single DPO that are routine, but have a potential for violence or hostility, are prohibited. Additional detail on homes visits are

provided in the Matrix, along with guidelines on arrests, searches, encounters that escalate, car stops, and foot pursuits (Procedure Manual Item 1-4-119, 12/01/11).

There was no documentation or evidence indicating that there have been any assaults on probation officers since October, 2011, and not a single incident of discharging a weapon has been reported. While there appear to be no incidents of an officer discharging his/her weapon, DPOs have found it necessary to un-holster their weapons in certain high-risk situations, including several arrests. Several officers believed that a Taser would be a good intermediate step between pepper spray or a baton, and the use of deadly force. Being equipped with a Taser could potentially prevent the need to use deadly force.

As noted above, the OCPD's Policies and Procedures Manual places the highest priority on the safety of its employees and the public (1-4-110, p.1). AB109 officers are equipped with many, if not most, of the defensive devices provided to police officers. The Department provides training to accompany these defensive devices. However, as noted, Tasers are not included in the equipment made available to AB109 officers. Equipping AB109 officers with a Taser would be a desirable tool to have in the escalation of force. Access to a Taser would protect not only the officer, but would potentially prevent a fatal consequence with a firearm. The public would also be better served without the potential of stray bullets hitting innocent bystanders.

Based on the Policies and Procedures Manual, a review of the equipment provided to probation officers, and comments from AB109 officers, the Grand Jury concludes that the Orange County Probation Department has taken a proactive approach to assure officer safety. A large majority of the personnel interviewed were satisfied and passionate about their assignments. However, as noted, several DPOs reported that the addition of a Taser could prevent the use of deadly force.

FINDINGS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are submitted to the Presiding Judge of the Superior Court.

Based on its investigation of AB109 and Public Safety in Orange County, the 2014-2015 Orange County Grand Jury has arrived at six findings as follows:

- F.1.** AB109 has not resulted in an overall increase in crime in Orange County.
- F.2.** Although AB109 offenders must meet requirements for no convictions of serious, violent, or sexual crimes, this is only true for their latest offense. Many AB109 offenders do have prior convictions for serious, violent, or sexual crimes in their criminal background.
- F.3.** AB109 offenders continue to pose a danger to the community at the current recidivism rate of approximately 30%, especially as it relates to property crimes.

- F.4.** AB109 offenders are at a higher risk for reoffending with 88% of them having a drug abuse history. Orange County does not have adequate residential drug treatment beds available for the number of AB109 offenders, thus limiting the use of this preventative alternative.
- F.5.** AB109 has placed Probation Officers at greater risk, however the Orange County Probation Department has placed a high priority on officer safety by providing adequate defensive tools to the officers including firearms, batons, pepper spray, and protective vests.
- F.6.** OCPD has provided many additional tools to probation officers under AB109 to ensure officer safety, with the exception of a Taser.

RECOMMENDATIONS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are submitted to the Presiding Judge of the Superior Court.

Based on its investigation of AB109 and Community Safety in Orange County, the 2014-2015 Orange County Grand Jury makes the following two recommendations:

- R.1.** The Health Care Service Agency and/or the Probation Department should review the cost of services provided to probationers, and/or on enforcement actions, to determine if any of these services or actions provide less consistent benefits toward reduced recidivism than residential treatment beds and, using funds that would otherwise be spent on those services or actions, increase the number of residential drug treatment beds. **(F.4.)**
- R.2.** The OCPD should provide Tasers as an option for AB109 probation officers. **(F.6.)**

REQUIRED RESPONSES

The California Penal Code section 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected official shall comment on the findings and recommendations pertaining to the matters under that elected official's control within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code section 933.05, subdivisions (a), (b), and (c), provides as follows, the manner in which such comment(s) are to be made:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the Grand Jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section 933.05 are required from:

Required Responses

Orange County Board of Supervisors: F.1., F.2., F.3., F.4., F.5., F.6., R.1., R.2.

Requested Responses

Orange County Probation Department: F.1., F.2., F.3., F.4., F.5., F.6., R.1., R.2.

Health Care Agency (HCA): F.4., R.1.

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APPENDIX

Mission Statement: Orange County Probation Department

"We are dedicated to a safer Orange County through positive change."

We believe:

- *Community protection can best be achieved via a role that balances enforcement activities and supportive casework.*
- *Our employees constitute our most valuable resource for accomplishing our Mission.*

We are committed to:

- *Delivering quality services in an effective and fiscally responsible manner.*
- *Providing a positive, challenging and supportive work culture.*
- *Improving our services through teamwork and program innovation, consistent with current knowledge influencing the field of corrections.*
- *Advancing professionalism through participation in joint efforts to improve the effectiveness of community corrections.*
- *Delivering services with integrity and in a manner which respects the rights and dignity of individuals.*

If Animals Could Talk About the Orange County Animal Shelter



GRAND JURY 2014-2015

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"So much of what we call management consists in making it difficult for people to work."

Peter Drucker

EXECUTIVE SUMMARY

The 2014-2015 Orange County Grand Jury found that the Orange County Animal Shelter has serious problems that have needed attention for many years. In addition to the desperate need for a new shelter facility, there have been complaints and allegations from a number of sources inside and outside the Animal Shelter that have focused on the lack of leadership throughout the Orange County Community Resources and Animal Care chain of command. This alleged void in leadership has resulted in either the inability of management to define the problems at hand or, if defined, an unwillingness to correct them. It has been alleged by many that the lack in leadership has led to a few mid-management personnel assuming control of the Animal Shelter daily operations with little or no oversight from upper management.

Additional information has led the Orange County Grand Jury to investigate concerns regarding employee morale, human and animal health issues, feral cat policies, and allegations of criminal behavior. Also, there have been indications of conflict between veterinarians and management staff with regard to medical decisions. The Orange County Grand Jury investigation found substantial factual support for all these allegations. In 2014, a workplace investigation report of the Animal Shelter was ordered by the Board of Supervisors and conducted by an outside firm whose findings revealed that there is significant evidence to support the complaints and allegations.

BACKGROUND

In 1941, the Orange County Animal Shelter was built and placed under the direction of the Orange County Health Care Agency. The animal care function was transferred to the newly created Orange County Community Resources Department in 2008 under the aegis of Orange County Animal Care (OC Animal Care). Over the years, various cities have contracted with the County for the provision of animal care services.

The 2014 - 2015 Orange County Grand Jury (OCGJ) discovered that the OC Animal Care has been of countywide concern for several years, as indicated by three prior OCGJ reports. The reports focused on deficiencies in policies and procedures; inadequate staffing; poor employee attitudes; low morale; and lack of communication and cooperation among management, veterinary staff, and kennel staff. The County agreed with the previous OCGJ findings, but chose not to implement the Grand Jury recommendations.

There have been some recent legal challenges involving Animal Shelter management. Two lawsuits were initiated against OC Animal Care in 2014, one in July by an animal rescue group alleging a pattern of abuse and neglect at the Animal

Shelter, and a second filed in October by a former employee who claimed he was retaliated against for “whistleblowing” after he voiced his concerns about safety issues.

The July 2014 lawsuit (*Logan v. Orange County Animal Care*) involved a nonprofit animal rescue organization whose \$2.5 million legal action alleged that the Animal Shelter staff failed to provide injured animals with appropriate veterinary care, and routinely euthanized healthy, adoptable animals while failing to hold the animals for adoption for the period mandated by law.

The October lawsuit (*Maniaci v. County of Orange*) was initiated by a former animal control officer who was terminated after he filed a complaint over lack of proper safety equipment and training for animal control officers. In addition, he had filed a complaint with the California Division of Occupational Safety and Health (known as Cal/OSHA) in May 2012. These complaints resulted in the OC Animal Care being fined \$6,750 for a serious safety violation.

REASON FOR STUDY

The 2014-2015 OCGJ received written and verbal complaints from current and former employees, including veterinarians, and from various humane organizations. Many of these alleged problems were the same as those discussed in the 1999-2000, 2003-2004, and 2007-2008 OCGJ reports: organizational malfunctions relative to poor morale, unfair hiring and promotion practices; and, mistreatment and mishandling of the animals. As a result of these complaints and allegations, the 2014-2015 OCGJ launched an investigation to determine whether the various claims were valid and whether prior OCGJ recommendations had been implemented.

METHODOLOGY

The OCGJ initiated an investigation that involved site visits of the Animal Shelter and other animal shelters inside and outside of Orange County. Numerous personal interviews of current and former shelter personnel were conducted and existing investigative studies of the Animal Shelter were analyzed. The following lists provide specific examples of the various sources of information utilized in completing this report.

Site Visits

1. OC Animal Shelter
2. Riverside County (Jurupa) Animal Shelter
3. City of Mission Viejo Animal Shelter

Interviews

1. Current and former OC Animal Care employees and staff, including past and present executive level staff and management, the employed and contract veterinarians, and executive level management at both the Riverside County (Jurupa) Animal Shelter and the City of Mission Viejo Animal Shelter

2. Executive management of the Office of the Auditor-Controller, the County Executive Office, the Office of Community Resources and the Office of the County Performance Auditor
3. OC Vector Control executive management and case investigators
4. OC Health Care Agency executive management at Public Health Services
5. O C Sheriff's Department, management at the Office of Research and Development

Previous Grand Jury Reports

1. 1999-2000, *We Can Do Better...Improving Animal Care in Orange County*
2. 2003-2004, *The Orange County Animal Shelter – Are Improvements Needed?*
3. 2007-2008, *Is Orange County Going to the Dogs?*

Independent Investigative Reports on the Orange County Animal Shelter

1. UC Davis 2008, The UC Davis Koret Shelter Medicine Program, Final Consultation Report, February 2, 2008 (UC Davis Report, 2008)
2. JVR Shelter Strategies, Orange County Animal Care, Shelter Consultation Summary, June 16, 2014 (JVR Shelter Strategies, 2014)
3. OC Vector Control Investigative reports: 2012, 2013, 2014
4. A workplace investigation report ordered by the OC Board of Supervisors (BOS) in May 2014, and submitted to OC Internal Auditor in October, 2014 (Workplace Investigation Report, 2014)

INVESTIGATION AND ANALYSIS

During an initial visit, the 2014-2015 OCGJ immediately noted that the Animal Shelter was rundown and in dire need of major repair or replacement. During the ensuing investigation, the OCGJ looked into several areas of concern. Among these were the following: health risks, environmental concerns, inhumane treatment of animals, staff training, alleged criminal behavior, and personnel issues.

Zoonotic Diseases

This investigation determined that there are potential problems with preventing zoonotic diseases that can be passed between animals and humans. Zoonotic diseases are very common and can be caused by viruses, bacteria, parasites, and fungi. They are commonly spread through animal urine and feces, or from being bitten by a flea, tick, or mosquito (Zoonotic diseases, n.d.). Serious concerns have been expressed by Vector Control about potential zoonotic diseases at the Animal Shelter (Vector Control personal communication, October 31, 2014).

Examples of those diseases are as follows:

- Leptospirosis is a bacterial disease that affects humans and animals. In humans, it can cause a wide range of symptoms, some of which may be mistaken for other diseases. Some infected persons may show no symptoms at all. Without treatment, leptospirosis can lead to kidney

- damage, meningitis, liver failure, respiratory distress, and death. The bacteria are commonly spread through animal urine (Leptospirosis, n.d.).
- Psittacosis is an infection that is acquired by inhaling dried secretions from infected birds. Although all birds are susceptible, pet birds (parrots, parakeets, and macaws) and poultry (turkeys and ducks) are most frequently involved in transmission to humans. In humans, fever, chills, headache, muscle aches, and a dry cough are common symptoms, and pneumonia may also occur (Psittacosis, n.d.).
 - Rabies is a viral disease of mammals most often transmitted through the bite of a rabid animal. The majority of cases reported to the Centers for Disease Control and Prevention (CDC) are traced to wild animals like raccoons, skunks, bats, and foxes. Rabies is a virus that attacks the central nervous system, ultimately causing disease in the brain and, if not treated, results in death (Rabies, n.d.).
 - Typhus is an infectious disease caused by bacteria of *Rickettsia* transmitted by fleas, mites, lice, and ticks during their feeding. The common symptoms include headache, malaise, skin rash, and sometimes nausea and vomiting. No vaccine is available for preventing the infection (Typhus, n.d.).

Feral Free Program

The Feral Free Program is also known as a trap-neuter-return (TNR) program. The feral cats are trapped or apprehended and brought to the Animal Shelter where they are micro-chipped, vaccinated, neutered, and then returned to the areas from which they were taken. This practice does not take into account the fact that feral cat colonies are found, not only in residential neighborhoods and industrial sites, but also at schools, college campuses, hospital facilities, parks, and beaches.

OC Animal Care implemented the Feral Free Program in 2013, and it is endorsed by several animal rights groups throughout the country. Proponents believe the program helps reduce the number of feral cats without euthanizing them. In 2014, OC Animal Care released 1,705 neutered and micro-chipped feral cats back into the communities (OC Animal Care, 2015).

Opponents of the program, including the Orange County Vector Control District (Vector Control), question its effectiveness. Vector Control is the agency that protects the public from vector-borne diseases spread by public health pests, such as mosquitoes, flies, fleas, and rodents. Vector Control's major concern is that released feral cats could easily become hosts to flea-borne typhus, a bacterial disease found in fleas and transmitted to humans by a bite (Vector Control personal communication, October 31, 2014). American Bird Conservancy also opposes the program because outdoor, free roaming cats pose a serious threat to birds and endangered wildlife (Shimura, 2015, April 19).

Due to the presence of feral cats at the Animal Shelter and at nearby Theo Lacy Jail and Juvenile Hall facilities, at least one illness has been reported that was attributed to fleas from feral cats. This occurred when an employee of the Sheriff's Department's

Research and Development organization, located near the Animal Shelter, called in sick on June 14, 2012. On June 24, 2012, the employee was diagnosed with Endemic Typhus and was hospitalized (Research & Development personal communication, November 20, 2014).

As a consequence of the illness, Vector Control conducted an investigation, citing the fact that there was a noticeable presence of feral cats at the Animal Shelter property. On March 3, 2013, Vector Control personnel were at the Animal Shelter and observed at least five feral cats on top of the cages and a dead rodent on the ground. When this observation was reported to a high-ranking official of the Animal Shelter, Vector Control personnel were told that only three feral cats were living at the Animal Shelter and they were used as “mousers.” The Animal Shelter official said that perhaps some additional feral cats had “escaped” (Vector Control personal communication, October 31, 2014).

Vector Control had issued multiple previous warnings to OC Animal Care regarding flea-borne typhus exposure risks at the Animal Shelter and adjoining properties, including Theo Lacy Jail and the Orangewood Children’s home. The OC Health Care Agency has asked that OC Animal Care comply with Vector Control’s recommendation that it conduct a California Environmental Quality Act (CEQA) review of the Feral Free Program in order to address the public health risk of flea-borne typhus and the legal liabilities posed by the release of these cats in areas where the disease is endemic (Vector Control personal communication, October 31, 2014).

OC Animal Care chose not to comply with Vector Control’s recommendations (OC Animal Care personal communications, November 13, 2014). Independent investigations (Workplace Investigation Report, 2014) have confirmed that current conditions at the Animal Shelter could pose a risk to public health. However, interviews with senior OC Animal Care officials have indicated that they support the Feral Free Program (OC Animal Care personal communications, September 11, 2014 and January 5, 2015).

It should be noted that OC Animal Care receives at least two grants to continue the Feral Free Program. One is the annual, recurring, \$100,000 Free-Roaming Cat Spay/Neuter Grant from PetSmart Charities. The other is the annual, recurring, \$50,000 Feral Freedom Grant from American Society for Prevention of Cruelty to Animals (ASPCA) (OC Community Resources, FY 2015-16, Annual Grants Table).

Further, the 2014 Workplace Investigation Report states that witness statements, documentary evidence, and preponderance of evidence indicated that:

- a minimum of three feral cats reside upon, and are maintained and fed by staff, on the premises of the Animal Shelter, and many more cats have been seen lounging on the premises last year;
- County-employed medical personnel and veterinarians have advised against the TNR program, calling it a potential public health hazard, ineffective, and a waste of tax dollars; and

- The report substantiated instances of OC Animal Care's delaying the spaying, neutering, and emergency treatment of domestic dogs and cats awaiting adoption. The adoptable animals have, on occasion, been assigned a lower priority for surgery than the spaying, neutering, and micro-chipping of feral cats.

Some veterinary experts are of the opinion that emergency treatment of domestic dogs and cats should be given priority over feral cats. According to a chief veterinarian from another California county, some counties have abandoned feral free programs (Veterinarian personal communication, October 27, 2014).

Vector Control personnel indicated that, during their investigation, they asked OC Animal Control personnel whether they kept records or had any data on the Feral Free Program concerning the locations and the names of the citizens who had called to have feral cats removed. Vector Control personnel were told that there were accurate records, but Animal Shelter personnel refused to share that information. The Vector Control personnel requested that the Animal Shelter notify them of the areas in which they were releasing the feral cats so those neighborhoods could be monitored for the flea borne typhus, but the Animal Shelter personnel refused to do so (Vector Control personal communication, October 31, 2014).

Vector Control representatives stated that the Feral Free Program could possibly contribute to the spread of typhus in Orange County and believed the program, as currently administered, violates the CEQA and the Clean Water Act. Vector Control believes that a program returning feral cats into other areas should have a CEQA review to determine if it would adversely impact the environment (Vector Control personal communication, October 31, 2014). Independent investigations have confirmed that the present conditions at the Animal Shelter could pose a risk to public health (UC Davis Report, 2008; Workplace Investigation Report, 2014).

Impound and Euthanasia Facts

The OC Animal Care Impound Summary sheet highlights, among other things, the extensive shelter workload based solely on the number of cat impounds and corresponding number of cats euthanized (OC Animal Care, 2015). For example, in 2014, 44% of cats that were impounded (5,581 cats) were euthanized. During that same period, 16% of the cats (2,007 cats) were adopted. In addition, 19% of the cats (1,689 cats) were feral free and released after being micro-chipped, vaccinated, and neutered (OC Animal Care Impound Summary March 5, 2015).

Soaking the Dogs

During the Animal Shelter inspection, the OCGJ observed that the kennels were hosed down while dogs were in the kennels. The OCGJ has confirmed during various interviews that this was a common, everyday practice. The OCGJ could find no justification to support the practice of soaking the dogs. The accepted standard for cleaning kennels is the "move-one-down" method to avoid soaking the animals. This is accomplished by moving the dog from an adjacent kennel down one kennel into an

empty clean kennel. The “move-one-down” method for cleaning kennels is considered one of the best methods in the industry as it helps to lower the dogs’ susceptibility to disease (JVR Shelter Strategies, 2014, p. 15; UC Davis, 2007).

Wasted Water

During the Grand Jury inspection, it was noted that the kennel attendants use large, industrial type water hoses for cleaning purposes. The water was running constantly even when the attendants were not present. There were no nozzles on the hoses, which necessitated walking to the end of the kennel row to turn off the water. Based on observations and subsequent interviews, the OCGJ concluded that this common practice could result in hundreds, if not thousands, of gallons of water wasted each day at the Animal Shelter.

Cat Trailers

During the inspection of the Animal Shelter, Grand Jury members entered one of the cat trailers and were overwhelmed by the strong odor of cat urine. In the two main trailers that house cats, there was limited air flow and no air conditioning. There was also a small cat isolation structure that was in total disrepair. These cat structures had environments that increased the vulnerability and exposure to disease (JVR Shelter Strategies, 2014, p.18).

Lack of Training and Equipment

Another major OCGJ concern is the lack of training for the Animal Control Officers (ACOs) and the absence of appropriate tools and equipment to deal with animals that need to be tranquilized or euthanized. In September 2014, two ACOs were accused of allegedly slaughtering a deer impaled on a fence in Anaheim Hills by slitting its throat. When the officers arrived at the scene and observed the deer hanging upside down on the fence, they were unable to remove the animal from the fence and determined that it should be euthanized (Ritchie, February 2015). A local veterinarian who witnessed the incident asked the animal control officers whether they had euthanasia drugs, and they told her that they were no longer allowed to carry them (Ritchie, February 2015). Although the veterinarian offered to administer the drug under her Drug Enforcement Agency (DEA) license, the officers decided to kill the animal by cutting its throat so it would bleed to death (Ritchie, February 2015). Another veterinarian, familiar with wildlife, conducted a review of the incident and referred to the American Veterinary Medical Association guidelines, which state that an animal’s throat cannot be cut in order to allow bleeding out unless it is under anesthesia (Ritchie, February 2015). Following an internal investigation, the two officers were dismissed (Ritchie, April 2015).

ACOs have stated that they do not have required professional training and procedures to deal with such a situation. In addition, they assert that they do not have the proper equipment to tranquilize or euthanize animals in the field, making it difficult to expect them to deal with such circumstances in a professional manner (Animal Shelter staff, personal communication, November 20, 2014).

Personnel Vacancies

The OCGJ learned during an interview with OC Animal Care management that OC Animal Care was understaffed by approximately 20%. Due to this shortage of personnel, the quality of service has degraded. There are fewer kennel attendants, which has resulted in a less-than-thorough cleaning of kennels and cages, and exercising the dogs. The JVR Shelter Consultation Summary of June 16 2014 revealed that, based on the Shelter's population on the date observed, it would require 18 staff members cleaning and feeding for eight hours to ensure basic care for every animal (JVR Shelter Strategies, 2014. p.4). At the time of the OCGJ site visit, only two kennel attendants were observed to be present.

The loss of ACOs has caused significant delays in field services, wherein dead animals in the field have been exposed to public view for several days. One former ACO stated that there had been a dead deer in front of a residence for five days before he was able to respond to the call. Although there is a need for 10-12 ACOs in the field on a normal day, there have been times when there was only one ACO available to respond to service calls throughout the entire County (OC Animal Care staff, personal communications, November 6, 2014).

It is common to have 70-100 unassigned calls for service with only two ACOs available to respond (Animal Shelter personal communication, November 6, 2014). In fact, on any given day, especially on Monday morning, there are commonly 100 calls backlogged. Many of those calls are minor in nature and many are handled telephonically. The delay for dead animals to be picked up can be longer than a week (Animal Shelter personal communication, November 10, 2014).

OC Animal Care hired a Chief Veterinarian and also appointed her as the Director of the Animal Shelter. OC Animal Care was operating at approximately 80% of authorized staffing or 112 employees (Organizational chart provided by Shelter Director, September 11, 2014). On November 4, 2014, the Grand Jury learned that there were 29 vacant Animal Shelter positions that would be filled as soon as possible. As of February 2015, eight of those 29 positions had been filled. On March 31, 2015, there were still four vacant ACO positions and eight vacant Kennel Attendant positions. The ACOs are required to complete a six-month training program before they receive an assignment. The recent ACO training session started with eight candidates with seven completing the course. Since then, three have resigned, leaving only four candidates to fill the void (OC Animal Care management, personal interviews, April 7, 2015).

There is also an acute shortage of Kennel Attendants, who only receive on-the-job training. Their duties include cleaning the kennels, which is critical to the health and welfare of the animals (Animal Care personal communication, April 7, 2015).

Morale Issues

During the investigation, the majority of the present and former shelter employees who were interviewed complained of morale problems. Those who discussed the morale issues identified specific management personnel who had created a "toxic" environment. Virtually every mid-level and lower-level employee identified the

same individuals in management as those who were responsible for low morale (Employee interviews, 2014 – 2015).

Potential Criminal Behavior and Other Serious Concerns

During the investigation, serious allegations of criminal behavior and other serious matters were brought to the OCGJ's attention. Since the OCGJ is not authorized to investigate criminal activity in a civil report, those complaints of a criminal nature were referred to the District Attorney's Office for investigation.

FINDINGS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled, "If Animals Could Talk About the Orange County Animal Shelter," the 2014-2015 Orange County Grand Jury has arrived at ten principal findings, as follows:

- F.1** There are serious morale issues among Animal Shelter staff, many of which can be attributed to poor management practices and lack of effective leadership.
- F.2.** The trap, neuter, and return practice is reportedly delaying the spaying, neutering, and treatment of domestic dogs and cats awaiting adoption and is evidence that the domestic animals have been assigned a lower priority for surgery than the spaying, neutering, and micro-chipping of the feral cats.
- F.3.** Feral cats have been allowed to roam freely in and around the Animal Shelter and have been fed by Animal Shelter staff, possibly contributing to human and animal exposure to zoonotic diseases.
- F.4.** Animal Control Officers do not have effective equipment or appropriate procedural options to deal with unique, emergency circumstances that may require special procedures such as tranquilizing and euthanizing in the field.
- F.5.** OC Animal Care is currently operating with a shortage of personnel, including Animal Control Officers (ACOs), thereby making it much more difficult for them to respond to calls in a timely manner throughout such a large county, especially since there is only one shelter to serve all of Orange County.
- F.6.** There is little evidence that the Feral Free Program has been successful in reducing the feral cat population, which could be a contributing factor to the spread of zoonotic diseases.
- F.7.** Kennels are hosed down with dogs still present in the kennels, resulting in the dogs getting soaked and becoming more susceptible to disease.

- F.8.** Kennel attendants were observed leaving the large water hoses running when not being used for cleaning purposes, thereby wasting large quantities of water.
- F.9.** There is limited airflow and no air conditioning in the cat trailers. The conditions in these trailers increase the vulnerability to disease.
- F.10.** There is a rodent problem, creating additional risk of humans and animals contracting zoonotic diseases.

RECOMMENDATIONS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled “If Animals Could Talk About the Orange County Animal Shelter,” the 2014-2015 Orange County Grand Jury makes the following ten recommendations:

- R.1.** Consider a change of leadership within the Orange County Community Resources Department and arrange for mandatory leadership training for all managers and supervisors that includes a curriculum of leadership skills, people skills, and diversity (F.1.).
- R.2.** Discontinue the practice of giving feral cats priority for surgery over the domestic dogs and cats awaiting adoption (F.2.).
- R.3.** Discontinue feeding feral cats and allowing feral cats to roam freely in and around the Animal Shelter (F.3.).
- R.4.** Develop proper protocols for Animal Control Officers to follow when confronted with unique circumstances in the field that require tranquilizing or euthanizing animals and take all measures necessary to ensure that the Animal Control Officers can be given the proper equipment and training in that regard (F.4.).
- R.5.** Establish a more aggressive approach in hiring qualified personnel on a timely basis, especially with the position of Animal Control Officer (F.5.).
- R.6.** Conduct an evaluation of the Feral Free Program to determine its effectiveness in the reduction of zoonotic diseases. (F.6.).
- R.7.** Utilize the “move-one-down” method for cleaning kennels to avoid soaking the animals. (F.7.).
- R.8.** Place nozzles on all water hoses and direct kennel attendants to turn off the water when not being used. (F.8.).
- R.9.** Improve the ventilation system in all cat trailers for the health and survival of the cats (F.9.).

- R.10** Promptly control the rodent population in order to reduce the possibility of spreading diseases to human beings and animals (F.10.).

REQUIRED RESPONSES

The California Penal Code section 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected official shall comment on the findings and recommendations pertaining to the matters under that elected official's control within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code section 933.05, subdivisions (a), (b), and (c), provides as follows, the manner in which such comment(s) are to be made:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the

agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section 933.05 are required from:

Responses are required from the Orange County Board of Supervisors for Findings F.1. through F.10. and Recommendations R.1. through R.10.

Responses are requested from the Director of OC Community Resources and from the OC Animal Shelter Director for Findings F.1. through F.10. and Recommendations R.1. through R.10.

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ORANGE COUNTY MENTAL HEALTH: CRISIS INTERVENTION PROGRAMS



GRAND JURY 2014-2015

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EXECUTIVE SUMMARY

This report addresses four major mental health issues in Orange County (County) — an obsolete Evaluation Treatment Services (ETS) facility for involuntary clients, a shortage of psychiatric beds for adults and adolescents, the absence of psychiatric beds for children (under the age of 12), and the need for the County to more effectively fulfill its role in the partnership between the County and private hospital emergency departments that are designated/contracted to provide services to clients referred by law enforcement.

The County has a large number of mental health programs funded by Proposition 63, the Mental Health Services Act (MHSA). This group of programs typically has a budget surplus each year. Based on figures in the Orange County Health Care Agency's current three-year plan, a MHSA surplus of over \$80 million is expected at the end of FY 2014-2015, which the County will roll over to the following fiscal year. Common sense suggests that a surplus of mental health resources in one area should be applied to urgent mental health needs in another. However, it is not that simple. The use of MHSA funds (until recently) has been generally restricted to funding *voluntary* patient programs.

The California state legislature recently exempted one new involuntary patient program (Laura's Law) from this restriction. Additionally, in 2013, Senate Bill 82, which specifically allocates MHSA funds in the form of grants for emergency (involuntary) mental health evaluation and treatment, was enacted into law. This is the funding source for Orange County's current expansion and modification of the ETS facility in Santa Ana. It is expected that these trends may lead to further relaxation of the restrictions on uses of MHSA funds for involuntary patient programs. Availability of MHSA funding for involuntary programs would allow the ability to tap resources and simplify the development of programs to address the needs of involuntary clients. This, in turn, would greatly reduce the stress on hospital emergency departments. The Orange County Grand Jury has concluded that the immediate funding need is for programs that include *involuntary* clients.

BACKGROUND

(A glossary of terms is included in the appendix of this report.)

Prior to 1967, the care of the mentally ill in California (State) was primarily a State responsibility. There were eleven large State operated institutions for the mentally ill located in various parts of California. While Orange County did not have one of these facilities, there were three located in nearby Los Angeles, San Bernardino, and Ventura counties.

This changed with a series of legislative acts beginning with the 1967 Lanterman-Petris-Short Act. This act significantly reduced involuntary commitments to state hospitals and established rigorous criteria through Section 5150 of the Welfare and Institutions Code (WIC). These criteria required that an individual be considered a danger to self or a danger to others in order to be the subject of a 72-hour psychiatric hold.

There followed a series of legislative actions that realigned mental health services from the State to the counties and provided a funding stream for community-based mental health programs.

The Mental Health Services Act (MHSA)

Proposition 63, The Mental Health Services Act, was approved by California voters in November, 2004 and became effective on January 1, 2005. Funds come from a 1% tax on California taxpayer's with taxable income exceeding \$1 million dollars. These funds are deposited into an MHSA fund and may not be used for any other purpose. However, they must be used for new programs, not to supplant funding for existing programs. The County's MHSA programs are administered by the County's Health Care Agency.

Senate Bill 82 – Investment in Mental Health Wellness Act of 2013

Passage of this bill modified several provisions of the Welfare and Institutions Code that govern the operation of the MHSA at the state and county levels. The bill restored the Mental Health Services Oversight and Accountability Commission's (MHSOAC) Proposition 63 funding for administrative purposes from 3.5% to the original 5% level. The additional funds were to be used to fund grants to counties to expand and improve crisis intervention, crisis stabilization, and mobile crisis support teams. While the restriction to not supplant funding for existing services remained, there was no language in SB 82 that restricted use for involuntary programs. In fact, a stated purpose of the funds was to "increase access to effective outpatient and crisis stabilization services in order to reduce the reliance on hospital emergency rooms." The excessive use of these private resources (hospital emergency rooms) is described in the bill as "inappropriate and unnecessary."

Overview of MHSA in Orange County

Mental health services in the County are provided by the Orange County Health Care Agency through Behavioral Health Services (HCA/BHS). The programs funded by the MHSA as well as other federal, state and local funding sources, are implemented using HCA/BHS staff or by private providers under contract with the County. HCA/BHS is responsible for planning, implementation, and evaluation of all mental health services in Orange County.

The amount of funding for MHSA programs in the County for FY 2014-2015 and the expected expenditures are presented below (Orange County Health Care Agency, 2014). In FY 2013-2014, the County left over \$112 million in unspent funds, and coupled with the current 2014/2015 allocation, has over \$228 million for qualified mental health programs in the current year.

Table 1 – FY 2014-2015 MHSA Budget

Funding Source	Amount
Unspent Funds from FY 2013-2014	\$112,348,766
New Funding FY 2014-2015	\$116,092,120
Total Available Funding	\$228,440,886
Estimated Expenditures	\$(145,436,166)
Expected Carryover to FY 2015/16	\$83,004,720

Data source: OCHCA 3-Year Plan (2014)

MHSA Local Oversight (Steering Committee)

The BHS Director has appointed a steering committee that is currently comprised of 65 members. The committee represents a wide range of County interests, including law enforcement, the Probation department, the District Attorney’s office, the Public Defender’s office, and the Juvenile Court. Private mental health service providers, community members as well as consumers and their families are also represented.

The role of the steering committee includes the following duties:

- Review all MHSA funding proposals and provide critical feedback.
- Make timely decisions that maximize the amount of funding secured by the County.
- Make recommendations regarding future MHSA allocations.

Mental Health Crisis Intervention Services

Mental health crisis intervention can be initiated by any one of several entities: an individual’s family, a medical doctor, a social service agency, or emergency responders, such as law enforcement officers and paramedics. According to HCA/BHS management, programs designed for involuntary clients are, in general, not eligible for mental health services funded by the MHSA.

California has adopted a mental health recovery model as a guide for developing and delivering mental health services. MHSA funded programs are subject to these guidelines as set forth in section 5801 and 5802 of the Welfare and Institutions Code. Section 5801(b) (5) WIC states:

The client should be fully informed and volunteer for all treatment provided, unless danger to self or other or grave disability requires temporary involuntary treatment, or the client is under a court order for assisted outpatient treatment pursuant to section 5346 (Laura’s Law), the client has been offered an opportunity to participate in a treatment plan on a voluntary basis and has failed to engage in that treatment.

This model is cited by proponents of using MHSAs funds only for voluntary treatment programs, such as the Disability Rights California, who strongly oppose the use of MHSAs funds to support county programs implemented under Laura's law.

In Orange County, there are currently three known exceptions to the restriction on using MHSAs funds for involuntary programs: 1) the Centralized Assessment Team (CAT), 2) the Psychiatric Evaluation and Response Team (PERT), and 3) programs provided to involuntary clients under the newly implemented Laura's Law (which was exempted by special legislation). A fourth exception will be future programs developed with SB 82 grant funds to expand and upgrade emergency mental health services. It is noted that HCA/BHS does not consider CAT and PERT to be involuntary programs. However, the Grand Jury concludes that since a preponderance of their work involves assessment of clients for involuntary holds under section 5150 WIC, they clearly provide services to involuntary clients.

The Emergency Assessment Teams (CAT and PERT)

CAT is an MHSAs funded program that provides 24/7 mobile response services for clients of all ages who are experiencing a mental health crisis. Team clinicians are often the first point of contact between the client and the County mental health system. The teams assist law enforcement, paramedics, social service agencies, and families by providing mental health crisis assessment services. PERT has the same functions and responsibilities as CAT but works more closely with law enforcement. PERT clinicians partner with designated police officers and provide training, outreach, and follow up services to ensure linkage to ongoing services. HCA/BHS management makes the decision to allocate staff to specific police agencies. Specific partner assignments and working hours are decided between the agencies subject to management approval.

The Involuntary Hold Process

A typical involuntary hold process begins when a subject comes to the attention of law enforcement because of reported or observed behavior that appears to be associated with mental illness, and the subject is not willing to voluntarily accept psychiatric evaluation or treatment services. If the subject is not committing a crime, but is considered to present a danger to self or danger to others, or is gravely disabled, the investigating officer may request an involuntary 72-hour hold authorized by Section 5150 WIC. This section allows for the subject to be transported to a designated emergency facility for evaluation and stabilization.

The officer normally calls the CAT or utilizes the PERT clinicians assigned to his/her department to evaluate the subject. The involvement of CAT or PERT staff is at the discretion of the police officer, who has legal authority to prepare the 5150 psychiatric hold and transport the subject to a designated psychiatric evaluation center. Consultation with CAT or PERT staff is not required, but most police agencies in the County use the mental health assessment teams as a matter of policy.

If CAT or PERT clinicians confirm that the evaluation warrants a 5150 hold, the clinicians will prepare the hold documentation and the subject is then transported to the County operated ETS in Santa Ana, or to any "designated" hospital emergency room

(ER) for further assessment and stabilization. “Designated” refers to the fact that these hospitals have been approved by the County HCA/BHS to receive clients referred under Section 5150 WIC. ETS is classified as an outpatient facility and will hold the subject up to 23 hours. If ETS cannot stabilize the client during that time, they will have the client transferred to a hospital with inpatient psychiatric beds. The 23 hour limit at ETS is because it is an out-patient facility. The 23 hours is part of the 72-hour hold period.

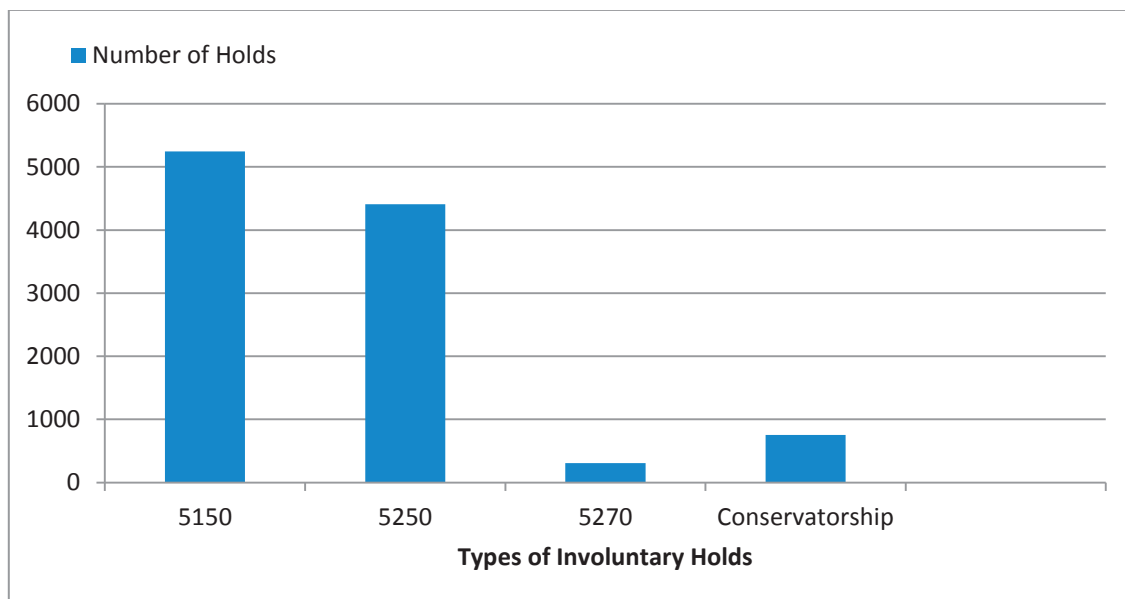
If the client is not stabilized within the 72-hour hold period, he or she can select a voluntary admission to a psychiatric unit or, if unwilling, the attending psychiatrist can write an order under Section 5250 WIC for an additional 14-day hold. In this event, a certification review hearing before a judge or hearing officer, under Section 5256 WIC, must take place within four days to determine probable cause.

If the client is still unstable and refuses treatment, the attending psychiatrist can write an order under Section 5270 WIC for an additional 30-day hold. Involuntary hospitalization beyond that provided by Section 5270 WIC requires a conservatorship hearing in Superior Court.

Frequency of Involuntary Holds

In 2014, there were 5,244 involuntary 72-hour holds under Section 5150 WIC processed in Orange County. This includes 2,938 individuals referred to the County operated ETS and 2,306 to County-contract inpatient beds. From this total number, 4,411 clients later had Section 5250 WIC orders prepared that extended the hold an additional 14 days. After the 14-day hold, 307 clients had 5270 WIC orders prepared extending the hold an additional 30 days. During the same time period, 756 clients were referred to the Superior Court for conservatorship proceedings (see Figure 1 for a graphical representation).

Figure 1 – Involuntary Holds in 2014



Data Source: Orange County Health Care Agency

In addition, there were 48 children (under age 12), placed on hold and 828 voluntary evaluations provided by ETS.

The Evaluation Treatment Services (ETS) Facility

ETS is a 10-bed psychiatric crisis stabilization unit that provides crisis intervention and acute psychiatric stabilization to adults with major mental disorders. It does not provide medical services. The objective of ETS is to stabilize the client and refer him to the least restrictive level of care. While most clients are on a 72-hour hold, the limit for ETS is 23 hours. If the client cannot be safely released during the ETS visit, he must be transferred to an in-patient facility.

Since ETS does not have medical facilities, it cannot accept clients who have untreated medical issues. For instance, if a client has an injury or other medical problem such as high blood pressure, he will be medically cleared at a designated hospital emergency room before he can be admitted to ETS.

REASON FOR THE STUDY

The 2014/2015 Grand Jury initiated an investigation of the County's MHSA program for a number of reasons. One of the most important of these reasons was to determine whether the County was appropriately allocating funds from its sizable MHSA budget toward the most appropriate and effective mental health programs.

As the Grand Jury commenced its investigation, Laura's Law was implemented by the County. The Grand Jury was interested in the mental health aspects of Laura's Law, and particularly how involuntary subjects interfaced with MHSA programs. As the investigation progressed, it became clear that the major mental health issues in the County were not as much with the well-funded, mostly voluntary MHSA programs, but with the underfunded crisis intervention services provided to involuntary clients, including those placed on a 72-hour hold for psychiatric evaluation and treatment. This is a situation encountered daily by law enforcement, which places considerable stress on private hospital emergency departments.

A related issue was raised in a series of articles published by the Orange County Register in October, 2014, regarding the serious shortage of psychiatric hospital beds in the County and the absence of psychiatric beds for children under age 12. Therefore, the focus of the Grand Jury investigation shifted from a general study of the MHSA programs to (1) a more specific study of the services and processes that exist to provide necessary crisis evaluation and stabilization services for involuntary clients, and (2) the need for in-patient psychiatric beds for adults, adolescents, and especially children.

METHODOLOGY

Information for this study was developed through the following efforts by the Grand Jury:

- Reviewed the 2006-2007 Grand Jury Report on MHSA
- Reviewed relevant literature, including grand jury reports from other counties
- Interviewed Orange County HCA/BHS management and staff

- Interviewed law enforcement personnel
- Interviewed CAT staff
- Interviewed Mental Health Foundation management and staff
- Interviewed management and staff at the ETS facility
- Surveyed hospitals with psychiatric beds in Orange County
- Interviewed a prominent mental health care advocate
- Interviewed private hospital emergency department professional psychiatric staff
- Attended a MHSA Steering Committee meeting
- Attended a Mental Health Board meeting
- Visited the Veteran's Mental Health Collaborative Court

The Grand Jury used these investigation methodologies to (1) understand the history and purpose of the MHSA, (2) understand the details of County MHSA program, (3) develop investigation issues, and (4) solicit authoritative opinions related to the issues.

INVESTIGATION AND ANALYSIS

Limitations of ETS

The ETS facility in Santa Ana has been in operation for more than thirty years. It began with ten beds and still has ten beds. It has been pointed out that the number of beds is not a true measurement of capacity since not all clients need a bed, and many can be accommodated through the use of chairs. HCA/BHS has estimated that the actual current capacity at ETS is 15 clients at a time. Once admitted, many clients are at the facility for a relatively short period of time, with the average stay being approximately 12 to 14 hours. No clients are there for more than 23 hours. However, according to a program narrative developed by HCA/BHS in support of a grant application, the average wait time for access to a bed at ETS or inpatient hospital has increased to more than 10 hours. At peak demand periods, the wait time is even higher and can last 2-3 days. The narrative further states that hospital emergency room personnel are at risk of physical injury as a result of delays in treatment for violent psychiatric clients. The California Hospital Association (CHA) has observed that emergency rooms are not the most appropriate place for persons experiencing psychiatric emergencies (Kruckenberg, 2013).

There is currently a plan in place to modify the ETS building and create space for additional clients. By removing some of the beds and adding a number of reclining chairs, it is estimated ETS can accommodate up to 22 clients.

There is additionally a plan to add triage staff at local emergency rooms. As mentioned earlier, the California Legislature recently passed SB 82, which authorizes the MHSOAC to administer a competitive selection process for 600 triage personnel statewide. A grant application prepared by the County, in collaboration with the Hospital Association of Southern California (HASC), was approved for submission by the Board of Supervisors and was awarded by MHSOAC (Triage Grant Application, 2014). The grant is intended to fund additional staff at ETS and mobile teams working out of a base

location. The grant amount is \$9 million over three years or, \$3 million per year. According to the plan, licensed psychiatrists will provide telephonic and/or in-person consultation to emergency room physicians and evaluation of emergency room clients upon request by the ER physicians. Additionally, licensed triage staff will be located at hospital emergency rooms. Deployment will be at a variety of hospital emergency departments to ensure geographic coverage throughout the County. Peer mentors (trained individuals who have experienced mental illness) will be based out of a contractor provider's office and will respond in the field for initial contact with clients and identified staff at ETS or hospital emergency departments.

A second grant application to the California Health Facilities Financing Authority (CHFFA) requested funding for a second emergency treatment services and triage center in South Orange County. That application was approved by the Board of Supervisors but was not funded by CHFFA due to a lack of specificity in the proposal. This project, budgeted at over \$10 million, would have funded acquisition and operation of a 31 bed crisis stabilization unit and a 15 bed crisis residential unit.

The ETS expansion plan, when complete, will relieve capacity stress on the system. However, this will not solve a basic problem: the inability to provide a full range of emergency services, including medical evaluation and treatment, to psychiatric clients. The HASC has been in discussions with the Orange County HCA regarding a plan to establish a Psychiatric Emergency Services (PES) model in Orange County. Converting ETS to a PES model of care would add a medical capacity for basic medical screening and the management of basic, non-emergency and/or chronic conditions. This would permit ETS to accept most 5150 clients directly, rather than first redirecting many to hospital emergency rooms for medical reasons.

Psychiatric Emergency Services

According to the California Hospital Association, PES programs are designed to provide accessible, professional, and cost-effective psychiatric and medical evaluations to individuals in psychiatric crisis and to strive to stabilize clients on site, and to avoid psychiatric hospitalization whenever possible. A PES team provides 24/7 emergency services to walk-ins, police-initiated evaluations, and crisis phone services.

Various studies have estimated that as many as 20-30% of psychiatric emergencies may be due to, or are combined with, serious medical concerns. It is important that all crisis clients receive appropriate medical screening. All efforts are made to stabilize or reduce the symptoms that are causing a person distress—be they suicidal thoughts, auditory hallucinations, severe paranoia, mania, or other complex mental conditions.

Treatment is provided in the least restrictive setting possible. All who are assessed by the PES will have a solid aftercare plan developed, including appropriate follow-up appointments, medication information, and strategies to help the person avoid crises in the future.

A typical dedicated PES department is staffed with psychiatric physicians and mental health professionals around the clock who can provide:

- Screening for all emergency medical conditions and provide basic primary medical care
- Medication management
- Laboratory testing services
- Psychiatric evaluation for voluntary and involuntary treatment; treatment with observation and stabilization capability on site
- Crisis intervention and crisis stabilization
- Screen for inpatient psychiatric hospitalization
- Linkage with resources and mental health and substance abuse treatment referral information

A major difference between a PES and the Orange County ETS is the ability to provide medical evaluation and treatment. The current County model is to rely on private hospital emergency departments for the medical clearance. This situation often results in delays in psychiatric evaluation and causes clients to languish for hours, and sometimes days, awaiting the arrival of a person trained to provide a psychiatric assessment, or an available inpatient psychiatric bed. This contributes to a major problem for the mental health system--the boarding of psychiatric clients for long periods of time in hospital emergency departments.

The Grand Jury found that too many psychiatric clients end up, for prolonged periods, in hospital emergency departments. Many commit crimes and are placed in county jail. Neither of these outcomes produces an appropriate treatment environment for the psychiatric client in crisis.

MHSA Funding for Involuntary Programs

The Grand Jury is aware of the apparent state restriction on the use of MHSA funds for involuntary programs. However, this is an issue that seems far from settled. The Disability Rights California (DRC) advocacy group in Sacramento has strongly opposed the use of MHSA funds for involuntary treatment and has threatened lawsuits against counties that act against this philosophy. The DRC strongly opposed legislation that provided an exception for Laura's Law, but has not filed any legal action challenging Laura's Law in any county. Another advocacy group, known as "Mental Illness Policy Org." disagrees with DRC's position and argues:

DRC would require us to believe that the purpose and intent of MHSA was to deny services to individuals who are not presently dangerous or gravely disabled, but are now 'likely' to become so. That argument requires the most tortured and cruel interpretation of the voters' intent. Their purpose was not to require people to become gravely disabled, but to prevent it. (Bernard, 2012)

Provisions of the California Code of Regulations (CCR) are cited as legal authority that prohibits use of MHSA funds for involuntary programs. However, Title 9, Div. 1, Chapter 14, Article 4, Paragraph 3400 (b)(2), states: "Programs and/or services provided with MHSA funds shall be designed for voluntary participation. No person shall be denied access based solely on his/her voluntary or involuntary legal status." (CCR).

This paradoxical regulation seems to permit the use of MHSA funds for involuntary participation as long as the programs were designed for voluntary participation. Additionally, there is precedent. Orange County currently has two *de facto* involuntary programs that are funded by MHSA: CAT and PERT, plus the newly implemented Laura’s Law program.

These precedents, coupled with the recently passed SB 82, which authorizes the use of MHSA overhead funds to be awarded to counties in grant form for the specific purpose of upgrading involuntary patient crisis evaluation and treatment programs, appear to open the door for direct funding for involuntary programs using MHSA funds allocated to the County.

Responses to Hospital Survey

Questionnaires were sent to 16 Orange County private hospitals that have psychiatric beds to assess their opinions regarding the County’s role in support of private hospital emergency departments. Responses were received from 12 hospitals, including one unsolicited response from a hospital without psychiatric beds. The hospitals were assured by the Grand Jury that their responses would be confidential, therefore, none are mentioned by name or other identifying information.

Contract with County

Among the 12 responding hospitals, some have a contract with the County and some do not. For the latter group, the hospitals were asked to identify the major reasons they do not have a County contract. Responses ranged from “never been approached” to “due to the extreme shortage of psychiatric beds in Orange County and the likelihood that our facility would become a *de facto* County facility.” One hospital has applied to be a 5150 designated facility and, after several months, is still waiting for a response from the County.

Other factors mentioned include County reimbursement rates and prior negative experience with receiving reimbursement for Medi-Cal, Cal Optima, and other unfunded clients.

County Responsibility

Another question posed to the hospitals was: “In your opinion, is the County properly meeting its responsibility to provide resources for emergency psychiatric services.”

In response to this question, two hospitals replied “yes” but ten replied “no”. The major issues for the “no” group revolved around the inadequate County resources devoted to providing timely and complete services for the 5150 involuntary holds, which creates significant stress on the private hospital emergency departments. Typical of several responses are the following:

“Approximately 18 months ago, the County advised all law enforcement and fire departments to transport all patients who are gravely disabled or have psychiatric problems to a designated psychiatric facility. There are only four designated psychiatric

facilities in Orange County, which has resulted in an increased daily census of psychiatric patients at [one of these facilities] of more than 40%. The number of psychiatric patients [that facility receives] often overwhelms [its resources and puts its] medical emergency patients and staff in unsafe conditions.”

“Part of the frustration for those of us in the private sector who provide services for the mentally ill has been the lack of a true partnership between the public and private sectors.”

“San Diego County provides an example of how we could better organize mental health care in this County. They saw the need to provide greater access to care for all the citizens of San Diego County. To do this in 2010, they implemented the opening of County Crisis Walk-in Clinics in several locations in the County, called Emergency Psychiatric Units (EPU’s). In contrast, Orange County has one facility, located in Santa Ana, that has not been upgraded since it opened in 1972.”

“It is very difficult to transfer a resident in need of acute services from a long term care facility. Transfers to lower level of care are held up due to acute hospitals not having documents—for example, a minute order from court or medication consents required for admission at a long term care facility. Also, PPD’s (skin test for tuberculosis) or chest x-rays are not completed, slowing down the transfer system.”

Suggestions for Change

Another survey question asked the following: “If more should be done by the County, can you suggest additional mental health resources that should be invested to ease the psychiatric bed shortage and provide more efficient and effective emergency treatment services?”

All hospitals that responded to the survey responded to this question. The more positive responses point to the planned expansion and improvement of ETS as a hopeful sign of improving County services in this area. Many responses recommended a new model for ETS that includes medical services.

Following are a few of the responses:

“County should create a psychiatric emergency department for patient evaluation including simple diagnostics, medications and behavioral health screen including follow-up resources, appointment, etc. for patients picked up by police, CAT Teams and medics. The most successful model appears to be based on the Alameda County model (John George Psychiatric Hospital).”

“An Emergency Treatment and Stabilization unit that can medically clear the patient, and evaluate the level of psychiatric treatment that is needed for the patient is needed, especially in South Orange County. Patients with known psychiatric conditions who are exhibiting symptoms consistent with their psychiatric diagnosis should be evaluated at the psychiatric treatment and stabilization site, and only be transported to an acute care hospital if they need medical stabilization. Patients with new symptoms can be medically cleared at the Hospital Emergency Department and then accepted to a designated psychiatric facility that is contracted with the County of Orange. The County

of Orange should reimburse hospitals for patients that are admitted to a non-contracted facility who were not able to be placed in a contracted facility within four hours. An updated documentation system that does not rely on faxing patient charts should be implemented to facilitate patient placement and ensure referrals are consistently documented and tracked.”

“We provide the same medical clearance services to everyone regardless of insurance or even county of residence. The County ETS facility, on the other hand, serves those who have been thoroughly medically screened, have had labs drawn, have normal blood pressure levels, have had a toxicology screening to ensure that there are no illicit substances in their system and they also must have Orange County MediCal or if they are indigent, their last known address must be an Orange County address, not that of a neighboring County. In contrast, the emergency rooms must take care of everyone, regardless of insurance, or lack of it, and without consideration of their country of origin.”

“The Hospital Association of Southern California (HASC), supported by other community constituencies, is currently developing a proposal for improving emergency psychiatric care in Orange County through adoption of a Psychiatric Emergency Services (PES) model of care. This PES model of care proposal is guided by such services as provided in Alameda County. This proposal would allow for the simultaneous emergency medical clearance and psychiatric evaluation and placement of psychiatric patients of all ages. This would create an improved model for Orange County and would replace ETS with a County operated PES level service with expanded capacity.”

A General Shortage of Psychiatric Beds

The California Hospital Association recommends that the standard ratio for population and psychiatric beds should be 50 beds for each 100,000 residents. By that standard, the number of beds to serve a county the size of Orange County would be approximately 1,500. According to a study by the above association, in 2013 Orange County had 557 psychiatric beds for a ratio of 16.03 per 100,000 residents. By comparison, the Los Angeles County number was 21.21 beds per 100,000, San Diego County was 24.39 beds per 100,000 and the state average was 16.76 beds per 100,000. (Kruckenberg, 2013)

The HCA/BHS has more recently reported that the number of psychiatric beds in Orange County has increased to 685 (not including jail beds). This increased number places the current bed/population ratio at 22.1 beds per 100,000 population.

The same study by the CHA points out that hospitals across the State have been closing psychiatric units, and entire psychiatric hospitals have been closing. Since 1995, the State has lost 44 facilities, either through the elimination of psychiatric inpatient care or complete hospital closure, representing a 24% decrease in the number of psychiatric facilities.

No Beds for Children

According to an article in the Orange County Register, there are 32 psychiatric beds in all of Orange County for the roughly 725,000 residents under the age of 18. For children under 12, the shortage is particularly acute; there is not one single bed. Consequently, children under 12 that need a psychiatric bed must find availability in another county (Wolfson, 2014). The Grand Jury was informed by HCA/BHS that an agreement with Children's Hospital of Orange County (CHOC) to establish a children's psychiatric unit is pending. HCA/BHS management expected that this would be presented to the Board of Supervisors for approval in May, 2015.

On May 21, 2015, the Orange County Register reported that CHOC will open an 18-bed psychiatric unit in 2017. This \$27 million initiative will provide beds for children from 3 to 17, with priority for those under age 12 (Perkes, 2015).

Support for Private Hospitals

Responses to the hospital survey and related interviews lead the Grand Jury to conclude that the County needs to better fulfill its role in the partnership between the County and hospitals. Several key hospitals believe the County is not meeting its responsibility to provide resources to address the problem of providing psychiatric and medical services to the 5150 hold population. Since Orange County does not operate a hospital, local private hospitals necessarily play a critical role in the psychiatric crisis intervention process and should be considered required stakeholders to represent their concerns and recommendations to the MHSA Steering Committee. It is noted that a member of the Steering Committee represents the Hospital Association of Southern California, but apparently no Steering Committee member directly represents any of the County's private local hospitals. The Grand Jury considers input to MHSA planning from this source to be of high importance and to have the potential of significantly improving communication, coordination and commitment between the County and its local hospital partners.

FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled, "Orange County Mental Health: Crisis Intervention Programs," the 2014-2015 Orange County Grand Jury has arrived at six principal findings, as follows:

- F.1.** The County's Evaluation Treatment Services facility does not provide needed medical stabilization services such as those included in the Psychiatric Emergency Services model.
- F.2.** The current need and demand for involuntary psychiatric emergency services in South Orange County is not being met.

- F.3.** The County has an insufficient number of psychiatric beds to provide in-patient care to mentally ill clients who are not able to be referred to less restrictive treatment.
- F.4.** Although a plan is in place at CHOC for an 18-bed unit to open in 2017, there are currently no psychiatric beds in Orange County for children under the age of 12.
- F.5.** The Mental Health Services Act Steering Committee has no direct representation from local designated private hospitals.
- F.6.** Given the language in the California Code of Regulations and the Welfare and Institutions Code regarding funding for involuntary treatment, the issue of using Mental Health Services Act funds for involuntary psychiatric clients who are gravely disabled or a danger to self or others, is unclear.

RECOMMENDATIONS

In accordance with California Penal Code Sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled “Orange County Mental Health: Crisis Intervention Programs”, the 2014-2015 Orange County Grand Jury makes the following six recommendations:

- R.1.** Continue with the planned expansion of the Evaluation Treatment Services facility in Santa Ana and convert it to a Psychiatric Evaluation Services model of care that includes basic medical services currently provided 5150 clients by private hospital emergency departments. (F.1.)
- R.2.** Add an additional Evaluation Treatment Services facility to be located in South Orange County and initiate substantive, concrete efforts to do so in Fiscal Year 2015-2016. (F.2.)
- R.3.** Continue efforts to locate and secure commitments for additional psychiatric beds in Orange County and nearby adjacent counties in order to increase the number of beds available for County use. (F.3.)
- R.4.** Follow-up on the planned children’s psychiatric unit at CHOC and continue to work with appropriate private hospitals in Orange County in an effort to provide additional psychiatric beds for children in Orange County. (F.4.)
- R.5.** Add Mental Health Services Act Steering Committee representation from designated private hospitals that have demonstrated effectiveness in evaluating and treating Welfare and Institutions Code 5150 clients in crisis situations. (F.5.)
- R.6.** Request an opinion from County Counsel regarding the purported restrictions on using Mental Health Services Act funds for involuntary mental health programs. (F.6.)

REQUIRED RESPONSES

The California Penal Code section 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected official shall comment on the findings and recommendations pertaining to the matters under that elected official's control within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code section 933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making authority. The

response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section 933.05 are required from:

Responses Required:

Responses to Findings F.1. through F.6. and Recommendations R.1. through R.6. are required from the Orange County Board of Supervisors.

Responses Requested:

Responses to Findings F.1. through F.6. and Recommendations R.1. through R.6. are requested from the Director of the Orange County Health Care Agency.

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APPENDIX: ACRONYM LIST/GLOSSARY

TERM	DESCRIPTION
BHS	Behavioral Health Services
CAT	Centralized Assessment Team
CDMH	California Department of Mental Health
CHA	California Hospital Association
CHCA	California Health Care Agency
CHFFA	California Health Facilities Financing Authority
EPU	Emergency Psychiatric Unit
ETS	Evaluation and Treatment Services
HASC	Hospital Association of Southern California
HCA	Orange County Health Care Agency
Laura's Law	Court Involved Program for Involuntary Mental Health patients clients
LPS	Lanterman-Petris-Short Act
MHSA	Mental Health Services Act
MHSOAC	Mental Health Services Oversight and Accountability Commission
PERT	Psychiatric Evaluation and Response Team
PES	Psychiatric Emergency Services
PPD	Tuberculine, Purified Protein Derivative: Skin Test for Tuberculosis
Proposition 63	A State initiative creating the Mental Health Services Act
WIC	Welfare and Institutions Code
WIC 5150	72-hour Involuntary Hold
WIC 5250	14-day Extension of Involuntary Hold
WIC 5256	Certification Review Hearing for 5250 Hold Extensions
WIC 5270	Additional 30 Day Involuntary Hold

Annual Inquiry on Jails and Juvenile Detention Facilities



GRAND JURY 2014-2015

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EXECUTIVE SUMMARY

The California Penal Code 919(b) requires that Grand Juries annually inquire into the condition and management of the various public prison facilities within their respective county jurisdictions. Since there are no state prisons in Orange County, the Grand Jury inquires annually into the condition and management of the various adult jails and juvenile detention facilities in the County. In addition, the Grand Jury has the option to inquire, inspect, or investigate any public detention facilities that are located within the County.

There are five adult jails and four juvenile detention facilities in Orange County that are subject to annual inquiries by the Orange County Grand Jury. All nine of these facilities, the OC Sheriff's Court Holding Facility, and the Santa Ana City Jail were visited for the purpose of inquiry. The Grand Jury has found the jails and facilities to be acceptable and in overall compliance with state and federal standards.

BACKGROUND

Five adult jails and four juvenile detention facilities are subject to annual inquiries by the Orange County Grand Jury (OCGJ). The Orange County Sheriff's Department (OCSD) operates the following five adult custody facilities:

- Central Jail Complex (CJX): Intake/Release Center
- Central Jail Complex (CJX): Men's Central Jail
- Central Jail Complex (CJX): Women's Central Jail
- Theo Lacy Facility
- James A. Musick Facility

The Orange County Probation Department (OCPD) operates the following four juvenile detention facilities:

- Juvenile Hall
- Youth Leadership Academy
- Youth Guidance Center
- Joplin Youth Center

Note: Throughout this report, the first part of each section will present pertinent information about adult jails, and the second part will present pertinent information about juvenile detention facilities.

Adult Jails Background

The following sections provide background information for the various facilities that the OCGJ visited. The Central Jail Complex (CJX) consists of the Central Jails Division, the Intake-Release Center, and the Transportation Division. They are interconnected by a series of corridors and tunnels that provide secure movement throughout the various structures. The Theo Lacy Facility and the James A. Musick Facility are separately located and not part of the CJX. In Santa Ana, the Orange

County Court Holding Facility at the Central Justice Center and the Santa Ana City Jail were also visited.

The following paragraphs identify two levels of jail capacities. *Rated capacity* is a term used by the Board of State and Community Corrections (BSCC) for recommended inmate occupancy using state standards. The *maximum capacity* is the highest occupancy level before the OCSD would be required to release inmates.

Central Men’s and Central Women’s Jails

The Central Men’s (CMJ) and Central Women’s Jails (CWJ) are part of the Central Jails Division and opened in 1968 and are designed as linear style facilities used for housing both sentenced and un-sentenced inmates in a maximum security setting. The CMJ has a rated capacity of 1,219 males and the CWJ has a rated capacity of 274 females (Board, 2015). The maximum capacity of CMJ is 1,427 inmates and CWJ is 388 inmates (Orange, September 24, 2014). At the time of the OCGJ inspection, the occupancy in CMJ was 1,213 males and the occupancy in CWJ was 346 females.

The Central Men’s Jail (CMJ)

The CMJ serves as a primary housing facility for the male population. There are several housing options, including one-, four-, six-, and eight-man cells. In addition, there are disciplinary isolation cells and dormitory style housing options.

The first floor includes a court that conducts arraignments to help streamline the court system within the CJX and to allow inmates to attend their court hearings. This operation began in October 2009, and processes 95 – 110 arraignments per day.

The second floor includes regular housing, dental, medical, and mental health clinics where approximately 1,450 medications are given each day, 55 miscellaneous medical treatments are conducted, and 60 diabetic inmates are treated. The second floor also has 76 different inmate programs with approximately 340 classes a year that include 12 Step, religious services, general education, and pre-release rehabilitation (Orange County, Central Jail, 2014).

The Central Women’s Jail (CWJ)

The CWJ serves as a primary housing facility for the female inmate population. The housing options include one-person cells, and 13-, 16-, and 36-person dorms. The facility also provides for medical/mental housing, disciplinary isolation cells, single infirmary cells, safety cells for mental housing, and Federal Immigration and Customs Enforcement (ICE) detainee compliant housing.

The first floor includes the infirmary, safety cells, and sheltered living quarters. Inmates are monitored by mental health professionals 24 hours a day, 7 days a week. The 13- and 16-person dorms are located on the first floor for inmates with less severe medical issues, and there are four disciplinary isolation cells. The first floor also includes dental, medical, mental health, and OB/GYN services. Each day approximately 820 medications are given, 40 medical treatments are conducted, and 5 diabetic inmates are treated.

The second floor has housing, the dining hall, and the kitchen. The general population has 36-person dorms and 16-single-cell housing for high risk and/or special-handling inmates. The second floor has 80 different programs with approximately 140 classes a year that include 12 Step, multi-denominational religious services, general education, and pre-release rehabilitation (Orange County, Central Jail Complex, 2014).

Intake Release Center (IRC)

The IRC opened in January, 1988, and is part of the CJX. IRC has a rated capacity of 408 inmates (Board, 2015) and a maximum capacity of 903 (Orange, September 24, 2014). It has a multi-storied, five-module configuration, in contrast to the older linear designs found in MCJ and WCJ. It provides a safe environment where arrestees are booked, processed, classified, housed, transferred, and released. A primary function of the IRC is to classify each arrestee in order to determine the initial housing location to which he or she will be assigned. The IRC also serves as the heart of the Court Transfer System, coordinating the movement of some 800 inmates per week. Every inmate who enters the county jail system is booked through the IRC. Approximately 60,000 new bookings occur each year, resulting in a daily population of all adult jails that ranges from 6,500 to 6,700 inmates.

The IRC is responsible for the following elements (Orange County, Intake Release, 2014):

Booking and Release:

1. Triage (Medical and Mental Evaluation)
2. TB Screening
3. Weapons and Contraband Pat-Down
4. Property / Clothing Inventory
5. Booking Photo
6. Identification
7. Classification
8. Housing (IRC, CMJ, CWJ, Theo Lacy, JAMF)
9. Release (Cite & Release, Bonded Out)

Inmate Records:

1. Open 14 hours a day, 7 days a week
2. Maintains all records for every inmate
3. Reviews all court paperwork, resulting in the updating and calculating of the inmates' sentences and the inmates' records for future court dates

Module L:

1. Designated as a medical/mental health housing unit
2. Medical and Mental Health professionals are assigned 24/7 to provide care for up to 97 inmates
3. Manages a Crisis Stabilization Unit (CSU)
4. Currently has 10 male beds assigned to the CSU

Immigration and Customs Enforcement (ICE) Detainees:

1. The IRC is rated by ICE as a 72-hour facility
2. Should ICE detainees have acute medical issues that would require extensive care or medical services, ICE personnel will pick up the detainees within 72 hours

Transportation Division

Transportation Division is included in the IRC command and is responsible for transporting inmates to and from courts, work sites, hospitals, state prisons, and out-of-county mutual aid during major events. The Transportation Division has a staff of 45 sworn and two professional employees and utilizes a variety of vehicles (Orange County, Central Jail, 2014).

Theo Lacy Facility

The Theo Lacy Facility is a maximum-security jail containing inmates of all security levels with a rated capacity of 2,494 inmates (Board, 2015) and a maximum capacity of 3,442 (Orange, September 21, 2014). It is located in the City of Orange, in the middle of an urban center including a retail mall, hospital, and other county government facilities. Inmates incarcerated at Theo Lacy are classified by their past confinement history, current charges, criminal sophistication, and a host of other significant indicators. Inmates are housed in units ranging from multiple-bunk dorms to one- or two-man cells. Inmates have access to television, outdoor recreation, local newspapers, mail, and commissary purchases. Religious services, vocational programs, and educational classes are also offered. Inmates receive medical, dental, and mental health care. Public visiting is available on Fridays, Saturdays, and Sundays.

Theo Lacy contains its own Booking and Intake/Release area as well as Classification, Inmate Records, and Inmate Law Library. In addition, there is a Community Work Program (CWP) and an Electronic Monitoring Program (EMP). The CWP allows minimum security inmates to do meaningful community work in lieu of 24-hour incarceration. The average daily CWP population for Fiscal Year (FY) 2013-2014 was 383. The EMP was implemented in March, 2013, and allows qualified sentenced misdemeanants to be monitored electronically instead of requiring incarceration. The average daily EMP population for FY 2013-2014 was 102.

Theo Lacy has an Emergency Response Team (ERT) that is used at the discretion of a sergeant, with notification to the Watch Commander, in situations that pose a threat to staff or other inmates. The deputies assigned to ERT are trained to use specialized equipment while responding safely and efficiently.

In July 2010, OCSD completed a contract with ICE for detention bed space and related services for ICE detainees. The ICE contract allows up to 838 detainees to be housed in the Orange County jail system. The average daily ICE population for FY 2013-2014 was 583 (Orange County, Theo Lacy, 2014).

The OCSD Inmate Services Division is very active at the Theo Lacy Facility. It serves all of the adult jail facilities and provides a wide array of correctional programs within the following categories: educational programs, behavior modification, substance abuse, vocational programs, and life skills.

James A. Musick Facility

The James A. Musick Facility is a one-hundred acre, minimum-security facility located in an unincorporated area of Orange County near the cities of Irvine and Lake Forest. The Musick facility has a rated capacity of 713 inmates (Board, 2015) and a maximum capacity of 1,322 (Orange, December 18, 2014). It opened in 1963 and is often referred to as the “Honor Farm.” The facility houses both men and women, and the inmates are considered low risk. ICE detainees are also housed at the facility as they await their immigration hearings. The average daily population for the facility in fiscal year 2014 was 1,190.

The Musick Facility offers several inmate programs, including GED, ESL, Substance Abuse, Workforce Preparation, Positive Parenting, Health Classes, Cabinetry, Welding, Sewing, Computer Skills, and Food/Culinary Services. In February 2013, inmate services implemented the Canines Offering Life Lessons and Rewards (COLLAR) program. This program provides vocational skills to inmates and offers a second chance to dogs from the Orange County Animal Shelter. Dogs with behavioral problems are trained to obey basic commands and to acquire socialization skills. After inmates attend six weeks of classroom study, they are provided with dogs. The dogs live in inmate housing areas for six weeks and receive training from an inmate services volunteer. The dogs are then adopted out to the public after graduation.

In addition to the above facilities, the OCGJ opted to inspect two additional adult facilities: the Orange County Sheriff’s Court Holding Facility and the Santa Ana City Jail.

Orange County Sheriff’s Court Holding Facility

The Orange County Sheriff’s Court Holding Facility is under the command of the Custody/Courts Division at the Central Justice Center in Santa Ana. It is responsible for efficiently shuttling prisoners in and out of the courts . The statistical information is as follows:

Daily average number of inmates: low = 165, high = 200

Special handling:

- Protective custody = 18-25
- Total separation = 7-9
- Juveniles = 1-2
- Crime partner separation = 1-2

Personnel:

- Total staff = 129

- Deputies = 71 (31 bailiff/40 detention)
- Sheriff Special Officers = 57 (18 bailiff/33 security/6 conservatee detail)
- Correctional Service Assistants = 5

Courtroom totals:

- Total courtrooms = 74
- Criminal = 39
- Civil = 35

Santa Ana City Jail

The Santa Ana City Jail (SACJ) opened in 1997 and is a revenue- driven facility owned and operated by the City of Santa Ana. It is a state-of-the-art city jail built with a podular, direct-supervision design, wherein the correctional officer is located within the pod, interacting directly with the prisoners. Jail personnel are civilian correctional officers employed by the Santa Ana Police Department. The only armed correctional officers are those who transport prisoners on the bus. There are normally 123 personnel, including clerical staff. There are positions for 78 correctional officers and 9 supervisors; however, the current staffing level is down to 72 correctional officers because of unfilled vacancies.

The jail has a maximum capacity of 512, but there are currently 460 beds. At the time of the inspection, there were 340 inmates. There is a unique classification system that allows the lower-risk inmates to have the freedom to be out of their cells throughout much of the day. The inmates have the liberty to shower, have coffee, and read the newspaper. The day rooms are carpeted and furnished; the cleanliness of the entire facility is the responsibility of inmates, which excludes ICE detainees. Inmates are required to keep their cells clean as they work under the direction of the correctional officers. Unlike regular inmates, the ICE detainees, have special privileges in that they are required to clean only their own cells; if ICE detainees are needed to perform additional work, they must be paid.

The facility has two federal contracts: one with the U.S. Marshal, and another with ICE. The jail previously had a contract with the California Department of Corrections and Rehabilitation (CDCR), but it was discontinued after the implementation of AB 109. Due to the federal contracts, the entire facility is governed by, and is in conformity with, the higher federal standards. An on-site federal auditor inspects the facility 2-3 times a week.

The facility is designated as a maximum-security facility. It does have a minimum-security section where the correctional officers have direct supervision of the inmates and a maximum-security section for the more dangerous inmates. There are 32 beds available for administrative segregation that currently house inmates who were transported for trials from such maximum–security state prisons as Pelican Bay. Currently there are 24 of those inmates in custody who are high-profile, dangerous inmates and may be subject to Racketeer Influenced and Corrupt Organizations Act

(RICO) charges. Members of the Mexican Mafia have been housed in administrative segregation.

The facility has an excellent video surveillance system that monitors the entire facility. The video recordings are kept for three to six months. When the prisoners are booked, they receive a medical exam before they are assigned to a cell or transferred to County Jail. For prisoners transferred to County Jail, there is a tunnel that goes under the street to the O.C. Sheriff's Jail. Prisoners are escorted through the tunnel three to four times daily when needed. This is beneficial for the booking officer, who does not have to wait for the next walk-through. The jail correctional officers wait until there are a few prisoners to go to the County Jail, at which time two correctional officers escort them through the tunnel. Once the prisoners are accepted by Sheriff's personnel, they become the responsibility of the Sheriff.

There are two units of female detainees, all of whom are on hold for various reasons (federal trials, witness protection, etc.), and none of whom are sentenced offenders. There are some occasional local bookings at the facility based on special circumstances. For example:

1. A deputy sheriff at County Jail has had previous contact with the inmate, thereby requiring the inmate to be separated from County Jail.
2. The District Attorney wants someone in protective custody.
3. An inmate is an informant and needs to be isolated.

SACJ is the only facility in the country to have a segregated section for males who are gay, bisexual, or transgender. As a result, there are federal prisoners who are transferred to the facility from all over the United States. The outside contracting agency's cost to house each prisoner is approximately \$82 dollars per day. However, each prisoner costs SACJ approximately \$110 per day. Annually, the facility collects approximately \$15 million, and it costs the City some \$17 million to operate.

Juvenile Detention Facilities Background

Juvenile Hall

Juvenile Hall is a 434-bed institution for juvenile offenders operated by the Orange County Probation Department in the City of Orange. It houses boys and girls, generally between the ages of 12 and 18, who are detained pending Juvenile Court hearings or who remain in custody by order of the Juvenile Court. Juveniles who are being prosecuted as adults are detained in Juvenile Hall separate from other minors.

Boys and girls are assigned to living units that are designed to house between 20 and 60 youth. The living units have sleeping rooms, restrooms, showers, and a day room for leisure and a variety of activities. Teenagers are normally housed by gender and age. The Intake and Release Center houses those youth newly arrested by police officers and awaiting their first court appearance. Each living unit is supervised by deputy juvenile correctional officers who provide individual and group counseling and supervise daily activities to ensure the safety of the juveniles and security of the facility and staff.

The Orange County Department of Education provides a fully accredited academic program for the youth at Juvenile Hall. Medical professionals from the Orange County Health Care Agency provide onsite medical and dental care. Psychiatrists and psychologists from the Health Care Agency evaluate and treat juveniles exhibiting emotional and mental health problems. In addition to the OCGJ, representatives from the Board of State and Community Corrections, the Juvenile Court, and Orange County Juvenile Justice Commission monitor conditions of confinement and care of the youth at Juvenile Hall.

Youth Leadership Academy (YLA)

The Youth Leadership Academy (YLA) is a 120-bed, juvenile detention facility operated by the Orange County Probation Department. The facility opened in July, 2006, and consists of two, two-story modular living units that are each designed to house 60 youth. Each building contains a control center, dayrooms, dining area, and multi-purpose areas with access to five classrooms and outdoor recreation space. A third building functions as an administration office.

YLA provides a PRIDE (Positive Rehabilitation in a Dynamic Environment) Program that is a comprehensive residential program for youth between the ages of 14 and 20 who have received lengthy local commitments. The program is designed for youth who would have been formally sentenced to the Department of Juvenile Justice, but are now sentenced at the local level. The program includes a behavioral based phase advancement process that allows traditional services with the Safe Schools therapists, including furloughs and family reunification counseling to assist in a smooth transition to the community. PRIDE also participates in the PAW Program (Puppies and Wards Program), a collaborative effort between the Orange County Animal Shelter and the Probation Department. The program pairs shelter dogs with youth serving commitments in the PRIDE Program .

The Youth Leadership Program focuses on preparing youth to re-enter and successfully transition back into the community. This program houses older males who are 17 – 20 years of age and encourages them to be leaders in the program and in their communities upon release. There are four levels of leadership for youth to achieve, ranging from Level 1 to Level 4. The responsibilities increase when they promote to each level. The goal of the program is to help youth increase their responsibilities and build a sense of self-confidence, self-esteem, and pride.

Youth Guidance Center (YGC)

The Youth Guidance Center (YGC) is an 125-bed facility that offers substance abuse rehabilitation for minors ranging from 13 through 20 years of age. The YGC facility provides centrally located accommodations to meet the commitment needs of the Juvenile Court. Of the 125 beds, 100 are for boys and 25 are for girls.

YGC offers two programs aimed at drug and alcohol abusers that focus on the needs of juvenile offenders. The primary goal of the program is to provide cognitive-behavioral interventions to facilitate social interactions and to develop the youth

emotionally, behaviorally, vocationally, and academically for re-entry into the community.

Each program has individualized treatment plans designed for the minor's specific needs. Each 25-bed unit has an assigned on-site psychologist, a drug counselor, and a probation officer who, along with an assigned deputy juvenile correctional officer, establish goals and objectives for the minors to achieve. All minors are required to participate in an academic program at the institution's Rio Contiguo High School, which is under the auspices of the Orange County Department of Education. Students normally attend six periods each school day; however, selected minors may attend off-grounds college courses. Boys and girls also take part in the culinary arts program as well as assist with the laundry and basic housekeeping, building maintenance/carpentry, and horticulture/landscaping.

Joplin Youth Center

The Joplin Youth Center (JYC) was originally established in 1956 as the Joplin Boys Ranch. It is located at a 1,800-foot elevation in the foothills of the Santa Ana Mountains. Today it is a juvenile correctional facility operated by the Orange County Probation Department, which provides residential treatment for teenage boys ages 13 to 16. The facility has a maximum capacity of 64 boys who are serving commitments ordered by the Juvenile Court. The boys at Joplin typically have 30 to 90 days remaining on their Juvenile Court commitments. The youths assist in maintaining the site and provide services by working in the kitchen, doing laundry, performing custodial work, and participating on various work crews. Off-site work includes supervised community projects that include graffiti removal and maintaining a portion of Whiting Wilderness Park. The normal school day consists of five 55-minute classes in which the boys work on individualized courses of instruction. Rehabilitation is also stressed along with academics. Narcotics Anonymous and Alcoholics Anonymous hold meetings on-site either weekly or every other week.

Each youth is assigned to a staff member who tracks his progress and needs. Volunteers offer a number of services, including Bible study, tutoring, and crafts. Families are allowed to attend case reviews and can meet with Joplin staff. The goal of the Joplin program is for the youth to avoid future criminal violations and to be productive citizens.

REASON FOR STUDY

The California Penal Code section 919(b) requires the following: "The grand jury shall inquire into the condition and management of public prisons within the county." Accordingly, the Orange County Grand Jury inquires annually into the adult jails and the juvenile detention facilities in Orange County.

METHODOLOGY

The 2014 -2015 OCGJ complied with the annual jail and juvenile facility inspection mandate by performing research, conducting interviews, and performing visual inspections of adult and juvenile facilities in the County. Research involved review

of documents associated with the various agencies charged with inspection and oversight of County facilities including prior Grand Jury studies. Interviews with the Orange County Sheriff's Department (OCSD) and Orange County Probation Department (OCPD) personnel were primary sources of information with supporting and confirming data provided by several outside agencies. Additionally, the OCGJ performed on-site inspections of County facilities.

The OCGJ utilized checklists developed by the BSCC that list criteria to be applied to specific locations or area of inspection: one checklist for adult jails, and another for juvenile facilities. See Appendix 1 for criteria and specific checklist examples

INVESTIGATION AND ANALYSIS

Based on research and observations, the OCGJ has found several noteworthy items for inclusion in this report as described below. Changes in the past few years have successfully addressed previous findings by prior Grand Juries, BSCC reports, and federal investigations. These changes include incorporation of a viable plan for video system upgrades and improvements in correctional health care.

State and Federal Impacts

The OCGJ is one of the many agencies responsible for inquiring into or inspecting the various correctional facilities. For example, the Intake and Release Center (IRC) has had some 25 inspections in the last 12 months, including those by the California State Department of Justice, Bureau of State Community and Corrections (BSCC), U.S. Marshal, State Fire Marshal, Orange County Fire Authority, Environmental Services Inspection, etc. Although the number of inspections appears to be excessive, each agency tends to focus on its mandated specialty.

Two recent California legislative actions (Assembly Bill 109 and Proposition 47) have had significant effects on the challenges and demands on each county's sheriff department and county probation department. Further, federal contracts continue to impact the management and operation of county facilities.

Assembly Bill 109

Assembly Bill 109 (AB 109) took effect on October 1, 2011 and has resulted in the shifting of responsibilities for incarcerating many less serious felons from the State to the counties. This shift of responsibilities is known as "prison realignment." In other words, the State has placed an increasing burden on the 58 counties for housing and managing convicted felons. As a result of this law, the State will continue to incarcerate offenders who commit serious, violent, and sexual crimes, but the counties will supervise, rehabilitate, and manage low-level offenders.

There are three categories of prisoners who were formerly incarcerated in State prisons, but are now located in county jails.

1. Offenders convicted in Orange County of non-sexual, non-violent, non-serious crimes serve their sentences in county jails rather than in state prisons. These offenders are referred to as "3-nons" or "1170(h) felons."

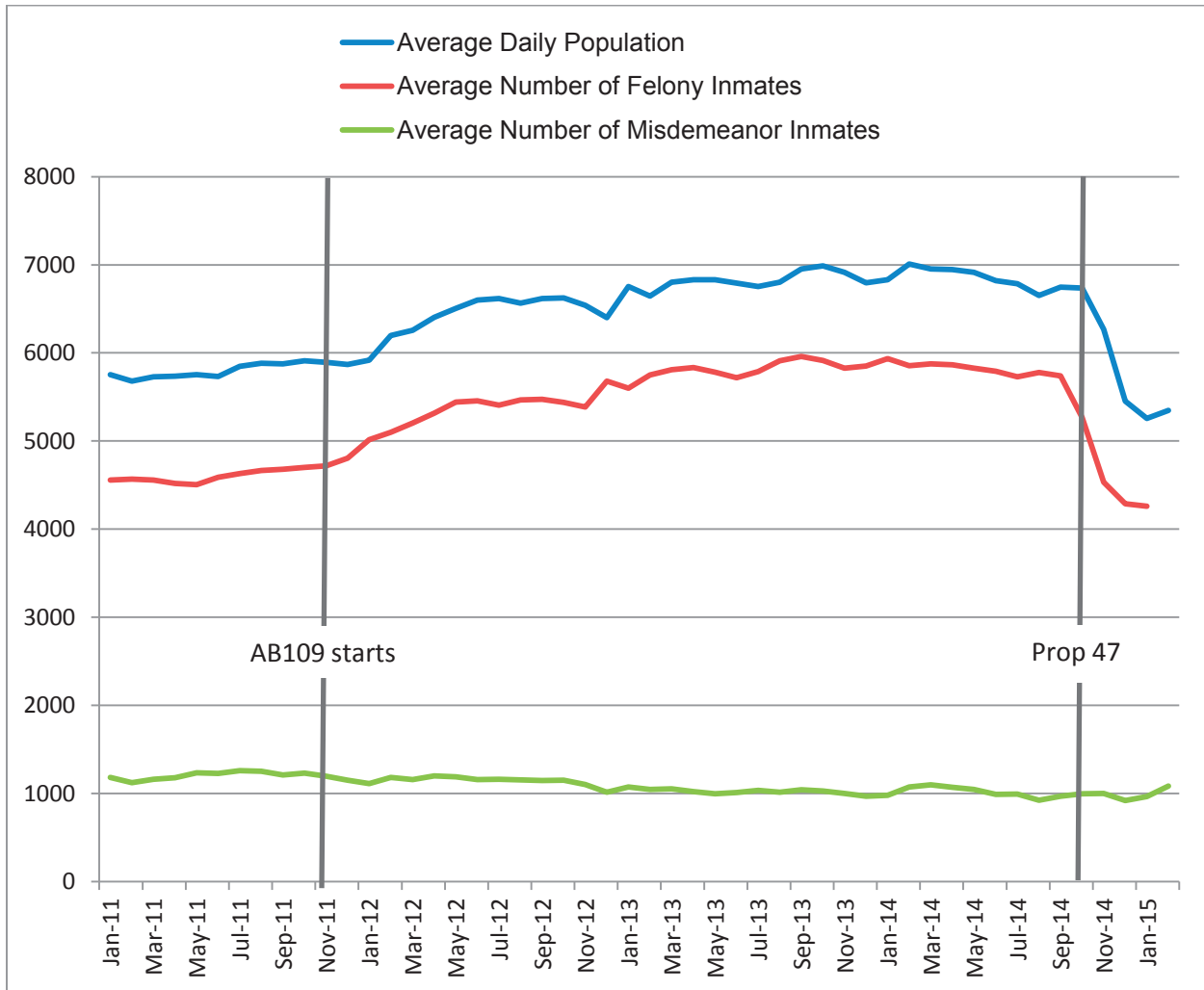
2. The majority of the “3-nons” offenders who had not completed their State prison sentence and were transferred to county jail to serve the remainder of their sentence.
3. State prison parolees who violate the terms of their release (technical violation), but do not commit a new felony, are no longer remanded to State prison but are sanctioned within the counties by the county probation departments (California Assembly Bill 109, Public Safety Realignment).

Proposition 47

California Proposition 47 (Reduced Penalties for Some Crimes Initiative), was approved by the voters on November 4, 2014, and took effect on November 5, 2014. The initiative reduces the classification of most “non-serious and nonviolent property and drug crimes” from a felony to a misdemeanor (California Proposition 47, Reduced Penalties for Some Crimes Initiative). Prosecutors who have been accustomed to using the threat of incarceration as leverage to coerce drug offending felons into drug treatment programs, will no longer have that tool because of the lenient sentences that accompany misdemeanor cases. Without the threat of jail, there is very little incentive to participate in a drug treatment program. Since this legislation was enacted, there has been a noticeable decrease in inmate population in the Orange County jails. When inmates in State prison have their felonies reduced to misdemeanors, many of them are immediately released from prison and return to the community.

With the passage of Proposition 47, and with fewer people incarcerated in Orange County jails, convicted misdemeanants are allowed to serve their sentences at home. Sheriff’s Department officials have stated that the GPS program has become a useful tool to reduce the jail population thereby allowing room for overdue repairs. Proposition 47 has resulted in the County’s daily inmate population dropping from over 7,000 in 2013 to about 5,300 in 2015 (See Figure 1). In addition, there is a significant cost savings by monitoring convicts through the GPS program. GPS monitoring costs \$4.75 per person per day, while incarceration in the county jail costs \$140 per person per day (Cuniff, 2014, April 5).

Figure 1: Orange County Jail Population Since 2011



(Board, n.d)

Federal Contracts

In August 2010, the Orange County Sheriff’s Department (OCSD) entered into a contract with the U.S. Department of Homeland Security (DHS) and ICE to house immigration detainees in Orange County detention facilities. The contract requires that a certain number of beds be available to ICE’s Enforcement and Removal Operations (ERO) activity. OCSD takes custody while ICE coordinates the detainees’ immigration proceedings. OCSD provides housing and services for the detainees in accordance with federal standards to provide consistent conditions of confinement for immigration detainees throughout the country (OCSD ICE/ERO Detention Contract).

Inmates with Mental Illness

Another challenge for the Sheriff’s Department is that of identifying and assisting inmates with mental illness. The average number of mental health cases reported each month (from October 2014 through February 2015) was over 1100. Given that the

average daily jail population over the same time period was approximately 6000, the mental health cases in the Orange County jail system are about 20% of the overall adult jail population (Board, 2015).

Inmates with mental illness are identified in various ways. When arrestees are brought to the Orange County Jail for booking, they are first seen by a health care staff member. Nurses conduct a medical/mental health screening that includes questions about current and past medical and mental health issues, past hospitalizations, current treatments, and medications. The nurses also document observations on behavior, affect, and appearance. Inmates with mental health issues identified in the initial screening will undergo a more comprehensive mental health screening and evaluation while still in the booking area to better determine housing and treatment needs. Inmates with identified mental needs are also assigned to a case manager for ongoing coordination of care throughout the incarceration.

Adult Facilities

Inspections

A large number of county, state, and federal agencies frequently inspect the adult facilities for compliance with a variety of requirements and standards (health, safety, fire, inmate conditions, standards compliance, programming, etc.). The OCGJ found that the reports from these agencies indicated that general jail conditions were acceptable and inspection certificates were current. Visual inspections further confirmed to the OCGJ that conditions are generally adequate. Though some conditions are understandably and necessarily austere, no significant health and safety issues were identified or observed.

Of all the various inspection agencies, the BSCC has perhaps the most rigorous inspections that deal with procedures, facilities, and conditions. These inspections are guided by State legislation, are conducted biennially, and have well defined procedures and checklists to ensure consistency across the State. The latest BSCC inspection of Orange County facilities occurred in June 2014, with a final report provided to OCSD on 1 April 2015 (Board, 2015). This most recent report found that the policies and procedures manuals used by OCSD were in compliance with applicable standards. Subsequent reviews confirmed that the practices were consistent with the procedures manuals with one exception. This exception concerned the visibility of inmates by OCSD deputies and was resolved satisfactorily prior to the report's release.

The Inspection portion of the BSCC report noted that on the dates of the June 2014 inspection, the overall combined rated capacity of the Orange County Adult Jail Facilities was 5,108 inmates and the population was 6,708. The primary reason for this noncompliance was attributed to the use of additional beds beyond rated capacities in dormitory areas as well as single- and double-occupancy cells. The Grand Jury did not observe any significant issues with overcrowding during independent visits. Further, even though the observed population exceeded the rated capacity, it is below the maximum capacity of the combined OCSD jail facilities which is 7,482. The maximum capacity is the point at which OCSD would be required to release inmates. Orange

County, unlike several neighboring counties (San Diego, Los Angeles, San Bernardino, and Riverside), has not had any early capacity releases since the beginning of the AB109 Realignment. (Board, n.d.)

Facilities

The population of the adult jail facilities is declining, likely due to both societal and legislative changes such as Proposition 47. As a result of Proposition 47, there was a temporary decrease in inmate population through January, 2015. During this period of housing fewer inmates, the OCSD completed long-overdue maintenance work in some of the aging jail facilities. Unfortunately, the February, 2015, inmate population increased slightly.

In preparing for the future, the OCSD has proposed an expansion of the housing capacity and infrastructure at the Musick facility. The first phase of the Musick expansion master plan will add 512 minimum/maximum security inmate beds to the Orange County Jail system. State Assembly Bill 900 provided \$100 million to fund the project. The following services will be incorporated into the new facility's state-of-the-art infrastructure: inmate housing, Inmate Receiving Center, video visitation, and administrative headquarters.

OCSD staff reported that the second phase of the expansion will cost approximately \$80 million, and the funding will be provided through State Senate Bill 1022. It will accommodate an additional 384 minimum/maximum security inmate beds. This expansion will house inmates and provide life skills programs to help inmates succeed upon release (Orange County, James A. Musick, 2014).

Equipment

Previous Grand Juries have found that all the adult jails have had inadequate video surveillance equipment. The Sheriff's Department response had been that they recognized the need for more adequate equipment in the jail facilities, and the upgraded video equipment had been listed as an improvement project for several years. However, the upgrades had not been completed due to lack of financial resources.

On January 14, 2015, the OCGJ received a *Jail CCTV Summary Sheet* from the Sheriff's Department that outlines the approval for future funding and installation of surveillance video cameras throughout the jails. When the entire project is complete, approximately 1,500 – 2,000 cameras will have been installed. The *Jail CCTV Summary Sheet* reveals that the Sheriff's Department has an approved budget total of \$10,850,608.50 over the next five years for this project. The project will be conducted in five phases as the Sheriff's Department prioritizes its jail video surveillance needs; upgrades will take place in order of priority.

Juvenile Facilities

Inspections

County, state, and federal agencies frequently inspect the juvenile facilities for a variety of requirements and standards (health, safety, fire, living conditions, standards

compliance, programming, etc.). The OCGJ researched these reports and found that the reports from these agencies revealed the general facility conditions to be adequate and inspection certificates to be current. Visual inspections further confirmed that conditions are generally acceptable. No significant health and safety issues were identified during the OCGJ inspections.

During the inspections, the OCGJ noticed that many deputy juvenile correctional officers were not wearing uniforms, resulting in an unprofessional appearance. Compensation guidelines specify that the employers must compensate those employees who are required to wear uniforms for the time they spend to change into or out of their uniforms.

Facilities

The populations of juvenile facilities are declining, likely due to both societal and legislative changes. For example, Juvenile Hall is a 434 bed facility for youth offenders. At the time of the OCGJ inspection, 157 beds were occupied, 134 were for boys, 23 were for girls, and there were an additional 11 others housed in the Mental Health Unit. This is a much smaller population than in the past. Staff offered the following reasons for the reduced numbers: use of gang injunctions and better policing leading to less violent gang activity; use of risk assessment tools, screening out low risk offenders from being detained with high risk offenders; and use of community-based outreach programs.

The OCGJ learned that there has been a need for a gymnasium at Juvenile Hall for recreation, especially during inclement weather. It could also be used for vocational training and as a visiting center. In April, 2015, prior to the publication of this report, the OCGJ further learned that Senate Bill 81 was recently passed, providing a grant of \$17.5 million for a multipurpose gymnasium at Juvenile Hall.

Equipment

Two of the Juvenile facilities have inadequate video surveillance systems; YGC and the JYC do not have any video surveillance systems. Juvenile Hall surveillance cameras are approximately 15 years old, and they are in the process of being replaced. All recordings are digital and color, but often fuzzy with ghosting images and low quality motion. Juvenile Hall has the capability of retaining recordings for 30 days only.

FINDINGS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled “*Annual Inquiry on Jail and Juvenile Detention Facilities*,” the 2014-2015 Orange County Grand Jury has arrived at the following four principal Adult Jail and five Juvenile Detention Facility findings, as follows:

Adult Jail Findings

- F.1.** The condition and management of the Orange County Adult Jail facilities are acceptable and in overall compliance with state and local standards.
- F.2.** The James A. Musick Facility offers a commendable and highly beneficial program called Canines Offering Life Lessons and Rewards (COLLAR).
- F.3.** The OCSD is taking advantage of the recent decrease in jail population to perform needed maintenance and upgrades to a countywide aging facilities infrastructure.
- F.4.** Although the jails still have outdated and inadequate video equipment, a viable upgrade plan with committed funding and priorities has been approved for implementation over the next five years.

Juvenile Facility Findings

- F.5.** The condition and management of the Orange County Juvenile Detention facilities are acceptable and in overall compliance with state and local standards
- F.6.** The need for a gymnasium at Juvenile Hall/Youth Leadership Academy will be met, now that a State grant via Senate Bill 81 has been received to fund this project.
- F.7.** Some deputy juvenile correctional officers do not wear uniforms, providing an overall appearance that is less than professional and making it difficult to differentiate deputy juvenile correctional officers from other staff.
- F.8.** The reduction in population at the various Juvenile facilities provides opportunities to conduct maintenance, repairs, and upgrades.
- F.9.** Two of the Juvenile facilities have inadequate video surveillance systems. The Joplin Youth Center and the Youth Guidance Center have no video surveillance systems.

RECOMMENDATIONS:

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected

by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled “*Annual Inquiry on Jail and Juvenile Detention Facilities*,” the 2014-2015 Orange County Grand Jury makes the following three Adult Jail recommendations and four Juvenile detention facility recommendations:

Adult Jail Recommendations

- R.1.** Consider expanding the Canines Offering Life Lessons and Rewards (COLLAR) program at James A. Musick facility. (F.2.)
- R.2.** In the event of any future decrease in jail population, continue to utilize that time to conduct the needed maintenance work on the various facilities. (F.3.)
- R.3.** OCSD should closely monitor and expedite the five year plan for installing video surveillance system upgrades. (F.4.)

Juvenile Facility Recommendations

- R.4.** The new facility at Juvenile Hall should serve multiple purposes, including a gymnasium, capability for vocational training, and a visitation center. (F.6.)
- R.5.** Deputy juvenile correctional officers working with juveniles should be required to dress uniformly in order to look more professional and to be more easily identifiable (F.7.)
- R.6.** During periods of population reduction, the OCPD should conduct maintenance projects as done by the OCSD. (F.8.)
- R.7.** Upgrade the video surveillance system in all of the juvenile facilities by installing modern equipment and increase retention capacity to one year (F.9.)

REQUIRED RESPONSES

The California Penal Code section 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected official shall comment on the findings and recommendations pertaining to the matters under that elected official’s control within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code section 933.05, subdivisions (a), (b), and (c), provides as follows, the manner in which such comment(s) are to be made:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section 933.05 are required from:

Responses Required:

Responses are required from the Orange County Sheriff-Coroner for Adult Jail Findings F.1., F.2., F.3., F.4., and Adult Jail Recommendations R.1., R.2., and R.3.,

Responses are required from the Orange County Board of Supervisors for Juvenile Facility Findings F.5., F.6., F.7., F.8., F.9 and Juvenile Facility Recommendations R.4., R.5., R.6., and R.7.

Responses Requested:

Responses are requested from the Orange County Probation Department for Juvenile Facility Findings F.5., F.6., F.7., F.8., F.9., and Juvenile Facility Recommendations R.4., R.5., R.6, and R.7.

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COMMENDATIONS

The OCGJ received full cooperation from all personnel at every facility. The OCGJ was given complete access to each facility. Staff members throughout the adult jails and the juvenile detention facilities were cordial, professional, and knowledgeable.

APPENDIX: INQUIRY CRITERIA AND CHECKLISTS

With regard to each area of jail and juvenile facility inquiries, the criteria were:

1. Condition of the facility
2. Cleanliness
3. Staff presence
4. Overall safety and security
5. Orderliness of operation

The OCGJ applied the above criteria on the Adult Evaluation Checklist in the following areas:

1. Booking
2. Intake-Release Center
3. Safety Cell
4. Sobering Cell
5. Kitchen
6. Dining Hall
7. Housing
8. Laundry
9. Exercise Area / Recreation
10. Visiting Area
11. Medical Area
12. Court Holding Area
13. Administrative Segregation (Anti-social / Poor behavior)
14. Segregation of AB 109 Inmates
15. Segregation of ICE Detainees
16. Housing for the Mentally ill / Medication / Suicide Watch
17. Protective Custody (Child Molesters / Law Enforcement Family)
18. Segregation of Gang Members
19. Disciplinary Isolation (Up to 10 days)
20. Operational Condition of Surveillance Cameras

Similarly, the OCGJ thoroughly applied the same criteria to each area on the Juvenile Evaluation Checklist. These areas included:

1. Booking
2. Intake-Release Center
3. Safety Cell
4. Kitchen
5. Dining Hall
6. Housing
7. Laundry
8. Schools/Classrooms/Programs
9. Exercise Area / Recreation Area
10. Visiting Area
11. Medical Area

12. Court Holding Area
13. Administrative Segregation (Anti-social / Poor behavior)
14. Segregation of ICE Detainees
15. Housing for the Mentally ill / Medication / Suicide Watch
16. Protective Custody (Child Molesters / Law Enforcement Family)
17. Segregation of Gang Members
18. Disciplinary Isolation (Up to 10 Days)
19. Operational Condition of Surveillance Cameras
20. Maintenance of Grounds
21. Overall Condition of Buildings

JOINT POWERS AUTHORITIES: ISSUES OF VIABILITY, CONTROL, TRANSPARENCY, AND SOLVENCY



GRAND JURY 2014-2015

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EXECUTIVE SUMMARY

Joint Powers Authorities (JPAs) (also referred to as Joint Power Agencies) are California organizations set up by California Government Code section 6500. This code section allows for two or more existing public agencies to jointly agree to perform a specific service for each of the member agencies. The intent was to enable that service to be accomplished with a larger economy of scale resulting in financial benefit to the taxpayers. The code also permits this agreement to authorize the creation of a separate legal entity (authority or agency) with the full power of a separate legal entity. Consequently, a JPA has the responsibility to report as a separate legal entity and to provide accountability to its sponsor public agencies and the public through the county auditor-controller and State controller's office.

The Orange County Grand Jury has four concerns with regard to JPAs in Orange County. These concerns are (1) the viability of the JPAs with Redevelopment Agencies (RDAs) as members since RDAs were eliminated in 2012, (2) the use of JPAs by government organizations to be controlled by a single government entity, (3) the lack of true disclosure and transparency of their organization and financial information to taxpayers, and (4) the extreme debt to revenue ratio of some JPAs, which brings into question their solvency. For example, if a city sets up a JPA with another legal entity under its own direct control, such as an RDA, then the JPA has the potential to become just a "shell" organization under the control of the city. This organizational structure has the potential to cloak funds and accountability of those funds (City of Bell-like complexity). It also appears that not all JPAs provide financial information to the State Controller and the Orange County Auditor-Controller as required by law. Furthermore, the Orange County Auditor-Controller does not proactively provide the information it receives in a clear and easily accessible manner for the citizens of the County.

BACKGROUND

Joint Powers Authorities (JPAs) are California organizations set up by California Government Code section 6500. This code section allows two or more existing public agencies to mutually agree, and create an agreement, to perform a specific service for each of the signatory agencies. Essentially, a new organization is created that is completely separate from the member agencies. A JPA is so flexible that it can be applied to nearly any situation that benefits from having public agencies cooperate.

JPAs may be formed between local public entities, e.g., regional water districts, energy agencies, cities, counties, or other entities described in California Government Code section 6500. They can be formed for many different reasons such as, but not limited to, acquisition of land, construction, maintenance, financing, insurance pooling, and operations of facilities. The intention is to save member agencies, and ultimately taxpayers, time and money by sharing resources and combining services. JPAs exist for various reasons such as expanding regional wastewater treatment plants, providing public safety planning, constructing roads, building and setting up emergency dispatch centers, or financing new county jails. By sharing resources and combining services, the member agencies potentially save time, create efficiencies, reduce overlapping services, and reduce costs.

Statutory Authority of Joint Powers Agreements (JPAs)

Government agencies derive their authority from California Government Code sections 6500-6536, also called the Joint Exercise of Powers Act. JPAs can only administer powers that are specific to the individual agencies.

JPAs are different from other forms of government in that they are formed by mutual agreement by the member participants and are not formed by voter initiative or voted on by the electorate. Each JPA is unique. It reflects the agreement among member agencies for a common purpose. As a legally separate public agency, it can sue, be sued, hire staff, obtain financing, assume debt, and manage or lease property. Joint powers agreements usually protect their member agencies from the JPA's debts or other liabilities (Cypher & Grinnell, 2007, p. 12).

JPAs and Debt Approval Loophole

Local governments, such as a city, can issue revenue bonds, but they need majority-voter approval. If the bond measure is approved, then the local government sells revenue bonds to private investors to raise capital in order to build a public facility or for other designated purposes. As the interest and principal on the bonds become due, they are repaid from city tax revenues.

However, a JPA can issue bonds without holding a general election. California state law allows JPAs to issue revenue bonds without voter approval, provided that each of the member agencies adopts a separate local ordinance. Although local voters can force a referendum election on these local ordinances, this rarely occurs (Cypher & Grinnell, 2007, p. 13). As a result, a city could set up a JPA and have the JPA take on the debt, thereby circumventing the mandated public approval process.

Types of JPAs

There are no official categories for the types of JPAs, but their services fall into five broad groups (Cypher & Grinnell, 2007, p. 14):

- Public services: (e.g., police and fire protection)
- Financial services: (e.g., financing construction of public works such as city halls, bridges, and flood control projects)
- Insurance pooling and purchasing discounts: (e.g., pooling entities for lower insurance rates)
- Planning Services: (e.g., addressing and planning for topics of regional importance that go beyond city and county limits)
- Regulatory enforcement: (e.g., ensuring that member agencies adhere to federal and state laws and procedures by conducting educational seminars, formulating enforcement procedures, and maintaining an oversight role)

Funding of JPAs

According to "Governments Working Together: A Citizen's Guide to Joint Powers Agreements," by Trish Cypher and Colin Grinnell (Cypher and Grinnell, 2007), there are

two popular funding vehicles for JPAs: (1) create a revenue stream, and (2) raise capital through revenue bonds. While JPAs do not require voter approval to issue bonds, each member agency must pass an ordinance. Voters have a 30-day period to object through a referendum requiring a public vote. If there is no referendum petition filed, the JPA is free to sell bonds and use the proceeds to build, make improvements, or buy equipment.

JPAs that provide funding and issue bonds for multiple agencies may pay for the operations by collecting fees from their member agencies for bond services. Issuing and selling bonds is a complex process, and a joint effort by a JPA has the potential to facilitate the transactions. These JPAs have the potential to provide these services to smaller agencies wanting to issue bonds.

JPAs may also sell bonds to refinance their member agencies' debts. The process involves the JPA selling bonds and using the proceeds to "buy down" a member agency's debt. This is a practice used to pay off a member agency's debt, thus allowing that agency to refinance at a lower-interest rate. However, the state no longer allows JPAs to issue bonds for development outside their members' jurisdiction. JPAs cannot levy taxes or assessments; however, individual agencies can levy their own taxes and assessments.

JPA Control and Oversight

JPAs are subject to the Brown Act, the California Public Records Act, the Political Reform Act, and other public interest laws. As a separate legal entity, a JPA must self-monitor its actions and activities for its members since no state agency directly oversees it. County auditors should review the JPA financial reports, and county civil grand juries function as civil watchdogs (Cypher & Grinnell, 2007, p. 28). Several state agencies, including the Secretary of State, State Controller, and the California Debt and Investment Commission, collect reports and data from JPAs.

JPAs that fail to report their financial information to the State or the county violate California Government Code sections that pertain to JPAs. For example, Section 6505 requires "strict accountability of all funds and report of all receipts and disbursements" (Section 6505 (a)), and "an annual audit of the accounts and records of every agency or entity" (Section 6505 (b)). The sections do not specify whether the audit has to be external or internal. However, Section 6005 (c) requires that when an audit of an account and records is made, "a report thereof shall be filed as a public record with each of the contracting parties to the agreement and also with the county auditor of the county where the home office of the joint powers authority is located." In addition, Section 6505 (g) provides that "JPAs shall be exempt from the requirement of an annual audit if the financial statements are audited by the (State) Controller to satisfy federal audit requirements."

JPAs and Special Districts

A JPA *is not* a special district, even though it might provide the same services. A *special district* is a separate local government with its own governing body that delivers services to a dedicated community. Special districts rely on other State laws for their

existence and legal authority, and on elected boards of directors for their governance. Most special districts provide only a single service to a defined area, in contrast to county and city agencies that provide multiple services within their boundaries. While cities and counties must provide mandated services per federal and state law, special districts provide services for which the public is willing to pay. Examples include fire protection districts, water districts, pest abatement districts, etc.

Although a JPA is not a special district, its financial reporting requirements are the same. The State Controller is required by State law in SB 282 (Chapter 288) to make available annually, in a separate report published in an electronic format on the Controller's website, certain financial information about selected districts. This law amends Government Code section 12463.1 for reporting on the financials of "selected districts." It further clarifies the definition of "selected districts" to exclude school districts, but to include all other public entities including special districts, JPAs, and public benefit corporations. The information provided in this report is required to be published no later than June 30 following the end of the annual reporting period. The Controller is required to include in his or her report information that best illustrates the assets, liabilities, and equity of selected districts. Specifically, the Controller is required to include in this report a breakdown of each special district's (1) fund balance, which shall include the reserved and unreserved funds, typical for a nonenterprise district; (2) retained earnings, which shall include the reserved and unreserved funds, typical for enterprise districts; (3) fixed assets; and (4) cash and investments. The Controller may also include separate line items for "total revenues" and "total expenditures." When the report is available, the Controller is required to notify the Legislature, in writing, within one week of its publication. (SB No. 282, Chapter 288, 2001)

JPAs have both advantages and disadvantages over special districts. (Cypher & Grinnell, 2007, p. 22) The stated advantages are that they are flexible, easy to form, encourage synergy and cooperation between members, and allow for financing. However, abuse of this financing advantage is not in the best interest of taxpayers. The stated disadvantages are that they require mutual trust between the members, require management resolve to retain members, may be difficult to dissolve, and may not have clear lines of transparency and accountability.

JPAs with Redevelopment Agencies

Many California cities set up redevelopment agencies (RDAs) to fund their urban renewal efforts. These same cities then set up JPAs between the city and its own RDA. This resulted in each of these three legal entities being controlled by one organization, that is, the city council.

Governor Jerry Brown signed into law two bills that amended California Community Redevelopment Law in order to redress the state's ongoing budget deficit and to curtail abuses by redevelopment agencies that deviated from the original intent of redevelopment law. Assembly Bill x1 26 (ABx1 26) dissolved all California RDAs, effective October 1, 2011. This legislation prevented RDAs from engaging in new activities and outlined a process for winding down the RDA's financial affairs. It also set forth a process for distributing funds from the former RDAs to other local taxing entities.

In response, the California Redevelopment Association, the League of California Cities, and other parties filed petitions with the California Supreme Court challenging the constitutionality of ABx1 26. On December 29, 2011, the California Supreme Court upheld the constitutionality of ABx1 26. Although delayed by litigation, approximately 400 RDAs were dissolved on February 1, 2012, with the assets and liabilities transferred to Successor Agencies and Successor Housing Agencies pursuant to ABx1 26. The bottom line, however, is that even though California RDAs have been dissolved, and they no longer officially exist, in some cases their successor agencies still remain an active member of a JPA!

REASON FOR THE STUDY

Given the large number (71) of JPAs reported in Orange County (OC) and the complexity of JPAs, the Orange County Grand Jury (Grand Jury) anticipated that there could be four concerns with regard to JPAs in Orange County. These concerns are (1) the viability of the JPAs with RDAs as members, since RDAs were eliminated in 2012, (2) the use of JPAs by government organizations to be controlled by a single government entity, (3) the lack of true disclosure and transparency of their organization and financial information to taxpayers, and (4) the extreme debt-to-revenue ratio of some JPAs, which brings into question their solvency. The Grand Jury suspected that nearly one-fourth of the JPAs are no longer relevant, due to the elimination of RDAs, and for other reasons. The question to be answered is: Are the JPAs with RDAs as a member still relevant and viable?

It was also anticipated that there has been extensive public debt generated under these JPAs with limited understanding by the public. The reason for the study was to provide taxpayers with information regarding these organizations and the financial exposure facing the public. This information provided to the public may stimulate further public demands for inquiry on transparency and accountability.

METHODOLOGY

The Grand Jury first attempted to obtain a comprehensive list of all of the JPAs that were in Orange County. Lists were requested from both the County Auditor-Controller's Office and the State Controller's Office. Neither of these lists was determined to be complete. As a result, the Grand Jury proceeded to investigate Special District reports, city financial records, and County financial records and Internet files. The result was that the Grand Jury determined that there are currently 71 JPAs in Orange County. However, it should be noted that due to the lack of a consolidated list by any County or State organization, the actual number of JPAs may be more than 71.

Once the Grand Jury had a list of the known JPAs in Orange County, the Grand Jury sent out a request for information (RFI) letter to each organization. This letter requested confirmation that the entity was a JPA. In addition, information was requested regarding the JPA's organization, charter, financial data, and the disclosure of information by the JPA into the public domain (transparency). The data utilized in this report is primarily that data provided by the JPA itself. If there were issues with regard to

inconsistent or contradictory data that was provided, follow-up calls to confirm or correct information were conducted.

INVESTIGATION AND ANALYSIS

The Grand Jury identified 71 JPAs currently registered in Orange County. There could be more, but the absence of accurate State and County record keeping and reporting makes it practically impossible to confirm the exact number. The Grand Jury investigation's request for information to the OC Auditor-Controller revealed that the Controller knows the JPAs in which the County is a member, but does not have a list of all of the JPAs in OC and cannot confirm compliance of their submittal of required information for public access. In addition, the OC Auditor-Controller does not provide easy-to-use online access to the data submitted by the JPAs.

The investigation revealed some interesting facts about those JPAs that were identified. Nine of those have no debt, revenue, activity, or liabilities. This caused the Grand Jury to question their purpose and viability. Of the remaining 62 JPAs, 29 (or, 47%) have "Financing" as their primary service or activity. Fifteen of the 62 have at least one school district as a member. Eight of the 62 have "Insurance" listed as their primary service. Eighteen (or, 29% of the 62) still have an RDA listed as one of their member participants. The 62 new or currently active JPAs out of the total of 71 have \$1.1 billion in total revenue, \$1.2 billion in expenditures, \$4.3 billion in assets of which \$1.5 billion are in reserve, \$7.1 billion in debt, and over \$600 million in unfunded liability. The Grand Jury concluded that the JPAs in Orange County control a significant amount of public funds with a limited amount of oversight and disclosure to the taxpayers.

Viability

The following nine JPAs in Orange County have no currently reported revenues, expenditures, assets, or liabilities:

1. Buena Park Public Financing Authority
2. Capistrano Unified Public Financing Authority
3. Countywide Public Finance Authority
4. Fullerton Library Building Authority
5. Garden Grove Public Financing Authority
6. Newport-Mesa United School District Public Financing Authority
7. Stanton Public Financing Authority
8. Tustin Public Financing Authority
9. Westminster Public Finance Authority

The Grand Jury questions the rationale and continued expense by the members of these JPAs to keep these legal entities in existence.

The following 18 JPAs in Orange County still have an RDA listed as one of their member participants:

1. Anaheim Public Financing Authority
2. Brea Public Financing Authority

3. Buena Park Public Financing Authority
4. City of Fullerton Public Financing Authority
5. City of San Clemente Public Financing Authority
6. Costa Mesa Public Finance Authority
7. Fountain Valley Financing Authority
8. Garden Grove Public Financing Authority
9. Huntington Beach Public Financing Authority
10. La Habra Civic Improvement Authority
11. Mission Viejo Community Development Financing Authority
12. Rancho Canada Financing Authority
13. Santa Ana Financing Authority
14. Seal Beach Public Financing Authority
15. Stanton Public Financing Authority
16. Tustin Public Financing Authority
17. Westminster Public Financing Authority
18. Yorba Linda Public Financing Authority

JPAs with RDAs have another unique problem associated with them. The passing of the ABx1 26 forced the RDAs to cease to exist and to become successor agencies. These successor agencies were expressly prohibited from taking on additional redevelopment or debt, and were required to wind down and pay off their existing debt under a conservator's guidance and State oversight. Once the debt is fully paid off, the successor agency is to terminate. This is a key issue with regard to JPAs. Since many of the JPAs have RDAs as one of their members, that member is now a successor agency. Since this successor agency can no longer perform its original charter, the purpose of the JPA is no longer valid. The Grand Jury has determined that these legal entities no longer serve any viable purpose or benefit for taxpayers.

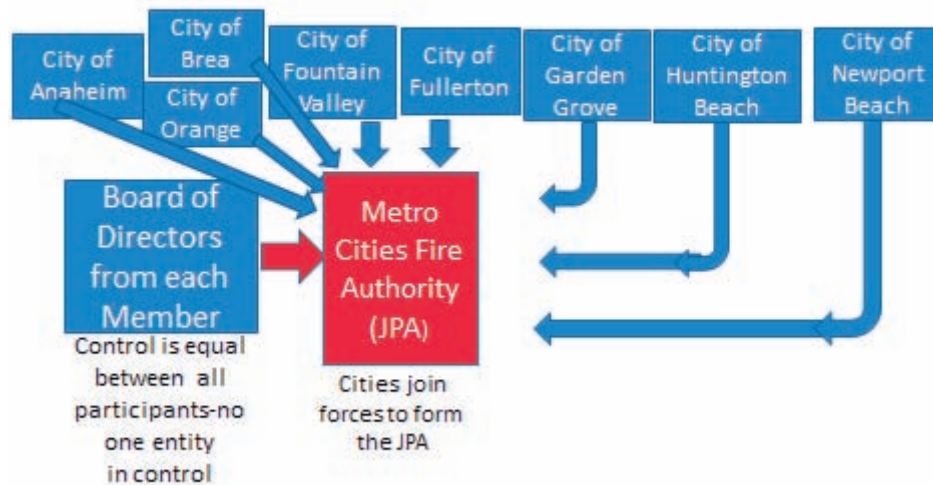
Control and Financial Loopholes

The Grand Jury determined that many different types of JPAs exist in Orange County. As a result, generalizations regarding their use or effectiveness cannot be easily made. State statutes authorize legal entities, such as cities, counties, school districts, or special districts to set up JPAs. These statutes give significant authority and latitude to these entities. As a result, many of these legal entities appear to set up JPAs which comply with the spirit of the law to provide financial benefit to the taxpayers. However, other JPAs may provide a legal means to avoid voter approval of debt decisions and to potentially mask financial accountability. This latter case is of significant concern since it is not in the best interest of taxpayers and does not provide for full transparency.

In its analysis, the Grand Jury has determined that "horizontal" JPAs appear to comply with the spirit of the law. These JPAs provide shared services such as insurance pools, training, area transportation, communication systems, workers compensation, area flood protection, and water supply to the community. JPAs were determined to be horizontal if their members were composed of similar entities that shared a common problem or opportunity. That is, each of the members was looking to delegate a function

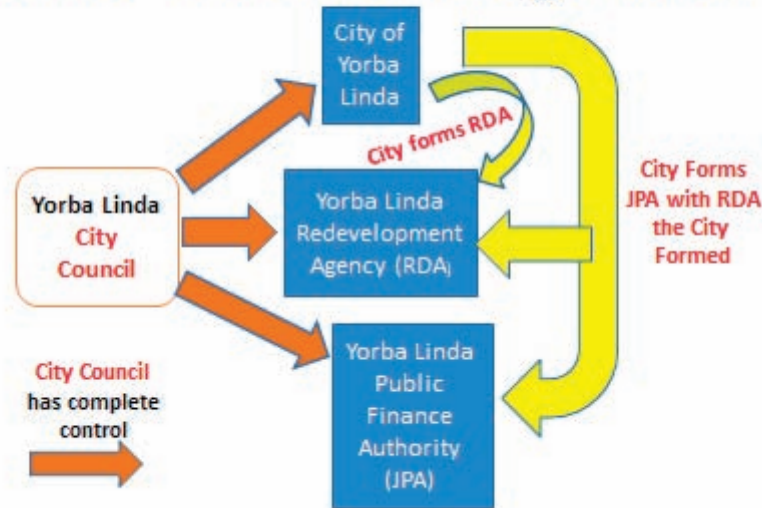
of their authority to a JPA in order to either improve the service that is provided or to reduce the cost through economies of scale. Each member in the JPA is motivated to have the JPA perform better than the individual member could do it alone. A JPA member is motivated to be looking out for their entity’s best interest. As a result, if the JPA is not providing the desired results or improvements, then the member can withdraw from the JPA and go it alone. As a result, there are organizational checks and balances that tend to allow for self-correction and accountability. Many of these horizontal JPAs also tend to provide a real service to the community.

“Horizontal” JPA Structural Organization



However, the Grand Jury has determined that “vertical” JPAs do not appear to comply with the spirit of the law. These JPAs were determined to be vertical if their members were not similar entities but rather the same entity with a different organizational structure. That is, all of the members of the JPA were controlled by a single authority. The most common type of these JPAs is a finance JPA with a single city and the same city’s RDA as its members. Under this structure, the city sets up its own city’s RDA then “jointly” agrees to set up the financing JPA. As a result, the city council has authority over the city, the city’s RDA, and the city’s financing JPA. One entity is now controlling all three entities; hence, the name “vertical.” As a result, there are not the same checks and balances of membership or control as with a horizontal JPA.

“Vertical” JPA Structural Organization



The Grand Jury initially did not understand the benefit of having a vertical JPA since, in this model, the city council had control over all three entities. Clearly the city could perform these functions on its own behalf. Upon further investigation, the reasons became clearer, but the potential risk to the public also became clear and engendered concern. This understanding came from the lessons learned from the City of Bell fiasco.

The City of Bell was not able to borrow any more money to pay for the salaries that the officials had granted themselves due to Article XVI, Section 18 of the California Constitution, which prohibits cities, counties, and school districts from borrowing an amount in a given year that exceeds "...the income and revenue provided for such year" unless approval is obtained from at least 2/3 of the voters (California Constitution, Art. XVI, Sec.18). So, the City of Bell created a vertical JPA under its city council's control. The JPA now had the authority to issue debt without the approval of the voters. Since the JPA is a separate legal entity, the city is not responsible for its debt. As a result, the JPA did not have collateral to obtain a loan. So the city transferred an asset from the city to the JPA to be the collateral for the loan. Consequently, a loan was given to the JPA since the risk to the bond holders was secured. The money obtained from this loan was then transferred back to the city to pay for general obligations. This answers the question of how the City of Bell was able to borrow so much money without the ability to ever pay it back. In this case, the city taxpayers were not given their legal right to vote on the city adding additional debt upon itself. The taxpayers were also paying for the asset the city gave to the JPA twice. It was already a city asset paid by tax money and now it was being paid off again through the JPA loan.

Another example of potential abuse using a JPA is through a vertical financial JPA that involves contract leases in lieu of asset procurement. This technique has the city sign a long term lease agreement to their own JPA, with the JPA as the lessor. The

JPA then buys a building or builds a building. The JPA can obtain debt financing since it is holding a long term lease from the city as its collateral. This approach does not require voter approval of the debt or voter approval on the capital investment for the city. Since the city council has total control over this vertical JPA, they can direct the process and the decisions.

The structure of a vertical JPA with a single entity having control over all of the members is a legal organization in the State of California. However, the Grand Jury has concluded that this vertical JPA could be used by the single governing entity to bypass other legal constraints on that same entity. This structure breeds the temptation to acquire more debt without a ceiling limit like that imposed on city governments. This type of JPA can be used to circumvent the California Constitution which prohibits cities, counties, and school districts from borrowing an amount in a given year that exceeds "...the income and revenue provided for such year" unless approval is obtained from at least 2/3 of the voters (California Constitution. Article XVI. Section 18. "Debt"). The JPAs are not bound by this prohibition and do not need voter approval unless contested during the 30-day referendum period. Transparency is limited in this type of transaction because most taxpayers are unaware that a notice has been posted and there is no requirement to give it wide public dissemination. In addition, the opaque, layered structure gives the government the ability to obfuscate financial transactions within the parent organization and hence from the taxpayers. This is the equivalent of a "shell company" in business. The Grand Jury has concluded that the use of a JPA to legally by-pass the voting rights of the taxpayers or obfuscates the financial transaction's real cost is an unacceptable situation for its citizens.

Transparency

The Grand Jury originally believed that they would be able to obtain information regarding the finances of JPAs from both the County or State government organizations since there is a statutory reporting requirement. However, this was not the case. The County did not have a list of JPAs in the County other than those JPAs of which the County is a member. In addition, the State records regarding JPAs were also found to be incomplete. There appears to be confusion by many of the JPAs regarding their responsibility to report to the State under SB 282 Chapter 288. This is further complicated because the State Controller's report lists them under a "Special Districts" heading. In addition, the State Controller's report provides a disclaimer that the State is not responsible for the content. In addition, the Orange County Auditor-Controller's Office does not provide any review or easy access to the JPA financial reports that are sent to them. Any assumption by the public that either the State or the County is providing a value-added review of the audited information, or lack thereof, would be incorrect.

As a result, the Grand Jury has concluded that there is extensive non-compliance with the disclosure requirements contained in the Government Code Section 6500 and SB 282. This results in a significant loss of transparency to the public and taxpayers. There are ten JPAs in OC that do not report their financial information to either the State or the County. In addition, there are 32 JPAs in OC that do not report their financial information to the State.

Solvency

While some JPAs have relatively modest levels of debt, others have very significant debt. The Foothill Transportation Corridor Agency and the San Joaquin Transportation Corridor Agency have a joint debt level of over \$4.5 billion, which is about 63% of the total debt reported by all the JPAs in Orange County. This level of public debt on the citizens of Orange County is very significant. These two transportation agencies only have an income level of \$292 million per year. With this extreme debt burden, the Grand Jury questions their ability to pay off the principal and interest, based on their current revenue level.

The Orange County Fire Authority is a JPA with annual revenue of \$331 million and a modest reported debt level of about \$10 million. However, the Orange County Fire Authority has an off-the-books unfunded debt liability of over \$577 million. This debt liability is the result of pension commitments made to employees which encumber future tax revenues that are not actuarially held in reserve. This has the potential to become a financial debacle, for the JPA and the taxpayers.

The Anaheim Public Financing Authority which is a JPA between the City of Anaheim and the Anaheim Redevelopment Agency, has an income of \$154 million and a debt exposure of \$1.2 billion. The debt level of this JPA is extremely high compared to its income level. In addition, with the elimination of the Anaheim Redevelopment Agency, its successor agency can continue to be a member of the JPA. However, neither the JPA nor the successor agency can exist for any other purpose besides paying off remaining debt or bonds. As a result, the Grand Jury questions both the viability and the solvency of this JPA based on the information provided.

FINDINGS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled “Joint Powers Authorities in Orange County,” the 2014-2015 Orange County Grand Jury has arrived at ten principal findings, as follows:

- F.1.** Orange County has nine “inactive” Joint Powers Authorities that have no viable activity, revenue, expenditure, assets, or liabilities. The Grand Jury determined that these Joint Powers Authorities serve no benefit to the public or the taxpayers and have the potential for misuse or obfuscation of public funds.
- F.2.** Horizontal Joint Powers Authorities among peer organizations appear to meet the intent of State laws to delegate a common service for a city or other legal entity for the purpose of reducing cost on behalf of the taxpayers.
- F.3.** Orange County has 18 vertical Joint Powers Authorities created by a city along with its redevelopment agency that no longer exists. The Grand Jury determined

that these Joint Powers Authorities serve no benefit to the public or the taxpayers and have the potential for misuse or obfuscation of public funds.

- F.4.** Vertical Joint Powers Authorities with a single controlling entity, such as a city council, have the potential to use this organizational structure as a shell company to avoid other legal constraints on the controlling entity and to obfuscate taxpayer visibility.
- F.5.** Vertical Joint Powers Authorities in which the controlling entity transfers assets from itself to a Joint Powers Authority for the purpose of obtaining additional funding, or signs a long-term lease to a Joint Powers Authority to obtain assets, are avoiding transparency and are not acting in the best financial interest of the taxpayers.
- F.6.** 32 of the Joint Powers Authorities identified in Orange County are not complying with the California State reporting requirements in code Section 6500 and SB 282 according to the latest information available from the year 2013.
- F.7.** The Orange County Auditor-Controller knows of the Joint Powers Authorities in which the County is a member, but does not have a list of all of the Joint Powers Authorities in Orange County and cannot confirm compliance of their submittal for public access. The Orange County Auditor-Controller does not provide easy-to-use online access to the data submitted to it by the Joint Powers Authorities that are compliant with the requirement to submit.
- F.8.** The Foothill Transportation Corridor Agency and the San Joaquin Transportation Corridor Agency have a joint debt level of over \$4.5 billion. The Grand Jury has determined that this debt level is excessive based on their revenues, and it threatens to render them insolvent.
- F.9.** The Orange County Fire Authority has an off-the-books unfunded debt liability of \$577 million which the Grand Jury has determined to be of concern since it is a real liability on the County taxpayers.
- F.10.** The Anaheim Public Financing Authority has a debt exposure of \$1.2 billion which the Grand Jury has determined to be excessive in light of the fact that it was incurred without voter approval.

RECOMMENDATIONS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled “Joint Powers Authorities in Orange County,” the 2014-2015 Orange County Grand Jury makes the following eight recommendations:

- R.1.** All Orange County Joint Powers Authorities that are “inactive” should submit the official paperwork with the State of California requesting termination of their

existence or provide at the next public meeting the justification for continuing the Joint Powers Authority. (F.1.)

- R.2.** All Vertical Joint Powers Authorities created by a city along with its redevelopment agency should submit the necessary paperwork with the State of California requesting termination of their existence. (F.3.)
- R.3.** All Joint Powers Authorities should take the following actions to insure transparency to the taxpayers: (1) have an annual outside audit, (2) post the complete audit on their city website as a separate Joint Powers Authority entity, (3) send the audit to the County Controller and the State Auditor, and (4) ensure the required reports are filed annually to the County and the State. (F.4., F.5.)
- R.4.** The 32 Joint Powers Authorities that are not complying with the California State Law requiring annual reporting should become compliant by submitting their 2014 report by December 31, 2015, and submitting the required reports annually thereafter. (F.6.)
- R.5.** The Orange County Auditor-Controller should maintain a current list of all of the Joint Powers Authorities in Orange County, confirm that reports have been submitted annually, and post the completed reports with all the details on an easy-to-use Internet public access website. (F.7.)
- R.6.** The Foothill Transportation Corridor Agency and the San Joaquin Transportation Corridor Agency should address their solvency by an aggressive plan to reduce their public debt. (F.8.)
- R.7.** The Orange County Fire Authority should address their lack of transparency by providing public disclosure of their off-the-books unfunded public liability in their financial statements and address their solvency by an aggressive plan to reduce their unfunded liabilities. (F.9.)
- R.8.** The City of Anaheim City Council should redress the debt incurred by the Anaheim Public Financing Authority under its direction by an aggressive plan to reduce their public debt. (F.10.)

REQUIRED RESPONSES

The California Penal Code section 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected official shall comment on the findings and recommendations pertaining to the matters under that elected official's control within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code section 933.05, subdivisions (a), (b), and (c), provides as follows, the manner in which such comment(s) are to be made:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section 933.05 and Penal Code 933(c) are required from the respondents listed in the following two Response Matrices (one for cities and County and one for Joint Powers Authorities):

Matrix 1 REQUIRED RESPONDENTS (Cities & County)

	Required Respondents	Findings										Recommendations							
		<u>F</u> <u>1</u>	<u>F</u> <u>2</u>	<u>F</u> <u>3</u>	<u>F</u> <u>4</u>	<u>F</u> <u>5</u>	<u>F</u> <u>6</u>	<u>F</u> <u>7</u>	<u>F</u> <u>8</u>	<u>F</u> <u>9</u>	<u>F</u> <u>10</u>	<u>R</u> <u>1</u>	<u>R</u> <u>2</u>	<u>R</u> <u>3</u>	<u>R</u> <u>4</u>	<u>R</u> <u>5</u>	<u>R</u> <u>6</u>	<u>R</u> <u>7</u>	<u>R</u> <u>8</u>
1	City of Anaheim Mayor & City Council			X							X		X						X
2	City of Brea Mayor & City Council			X									X						
3	City of Buena Park Mayor & City Council	X		X								X	X						
4	City of Costa Mesa Mayor & City Council			X									X						
5	City of Fullerton Mayor & City Council	X		X								X	X						
6	City of Fountain Valley Mayor & City Council			X									X						
7	City of Garden Grove Mayor & City Council	X		X								X	X						
8	City of Huntington Beach Mayor & City Council			X									X						
9	City of La Habra Mayor & City Council			X									X						
10	City of Lake Forest Mayor & City Council			X									X						
11	City of Mission Viejo Mayor & City Council			X									X						
12	City of San Clemente Mayor & City Council			X									X						
13	City of San Juan Capistrano Mayor & City Council	X										X							
14	City of Santa Ana Mayor & City Council			X									X						
15	City of Seal Beach Mayor & City Council			X									X						
16	City of Stanton Mayor & City Council	X		X								X	X						
17	City of Tustin Mayor & City Council	X		X								X	X						

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	Required Respondents	Findings										Recommendations								
		F1	F2	F3	F4	F5	F6	F7	F8	F9	F10	R1	R2	R3	R4	R5	R6	R7	R8	
18	City of Westminster Mayor & City Council	X		X									X	X						
19	City of Yorba Linda Mayor & City Council			X										X						
20	Orange County Auditor-Controller							X									X			

Matrix 2 REQUIRED RESPONDENTS (Joint Powers Authorities)

	Required Respondents	Findings										Recommendations								
		F1	F2	F3	F4	F5	F6	F7	F8	F9	F10	R1	R2	R3	R4	R5	R6	R7	R8	
1	Anaheim Community Center Authority				X	X									X					
2	Anaheim Housing and Public Improve. Auth.				X	X									X					
3	Anaheim Public Financing Authority			X	X	X					X		X	X						X
4	Big Independent Cities Excess Pool				X	X								X						
5	Bonita Canyon Public Facilities Fin. Auth.				X	X								X						
6	Brea Community Benefits Financing Auth.				X	X								X						
7	Brea Public Financing Authority			X	X	X							X	X						
8	Buena Park Public Financing Authority	X		X	X	X						X	X	X						
9	California Insurance Pool Authority				X	X								X						
10	Capistrano Unified Public Financing Auth.	X			X	X	X					X		X	X					
11	Central Net Operations Authority				X	X	X							X	X					
12	City of Brea Midbury Assessment Auth.				X	X	X						X	X	X					
13	City of Fullerton Public Financing Auth.			X	X	X	X						X	X	X					
14	City of San Clemente Public Fin. Auth.			X	X	X	X						X	X	X					
15	Coastal Animal Services Authority				X	X	X							X	X					

Joint Powers Authorities: Issues of Viability, Control, Transparency, and Solvency

	Required Respondents	Findings										Recommendations							
		F 1	F 2	F 3	F 4	F 5	F 6	F 7	F 8	F 9	F 10	R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8
16	Coastal District Financing Authority				X	X								X					
17	Co-Op- Org. Develop. Employee Selec.Proced.				X	X								X					
18	Costa Mesa Public Finance Authority			X	X	X							X	X					
19	Countywide Public Finance Authority	X			X	X	X						X	X	X	X			
20	Fountain Valley Financing Authority			X	X	X	X						X	X	X				
21	Fullerton Arboretum Authority				X	X								X					
22	Fullerton Library Building Authority	X			X	X	X						X	X	X				
23	Fullerton School District Financing Auth.				X	X	X							X	X				
24	Garden Grove Public Financing Authority	X		X	X	X	X						X	X	X	X			
25	Huntington Beach Public Financing Auth.			X	X	X							X	X					
26	Independent Cities Risk Management Auth.				X	X	X							X	X				
27	Integrated Law and Justice Agency for OC				X	X	X							X	X				
28	Irvine Child Care Project				X	X	X							X	X				
29	Irvine Unified School District Financing Auth.				X	X								X					
30	Joint Powers Employee Benefit Authority				X	X								X					
31	La Habra Civic Improvement Authority			X	X	X	X						X	X	X				
32	Metro Cities Fire Authority				X	X	X							X	X				
33	Mission Viejo Commu. Devel. Fin. Auth.			X	X	X	X						X	X	X				
34	National Water Research Institute				X	X	X							X	X				
35	Newport-Mesa United School Fin. Auth.	X			X	X	X						X	X	X				
36	North Net Joint Powers Training Agree.				X	X	X							X	X				

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Joint Powers Authorities: Issues of Viability, Control, Transparency, and Solvency

	Required Respondents	Findings										Recommendations							
		F 1	F 2	F 3	F 4	F 5	F 6	F 7	F 8	F 9	F 10	R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8
37	Northern OC Self-Funded Workers Comp..Auth.				X	X								X					
38	Northern OC Lia. & Property Self-Insu.Auth.				X	X								X					
39	Orange County Cities Airport Authority				X	X								X					
40	Orange County Civic Center Authority				X	X	X							X	X				
41	Orange County Council of Governments				X	X	X							X	X				
42	Orange County Fire Authority				X	X				X				X				X	
43	Orange County Fringe Benefits Agreement				X	X								X					
44	Orange County Public Financing Authority				X	X								X					
45	Orange County-City Hazardous Matl. Auth.				X	X								X					
46	Orange Uni. School Distr. Public Fin. Auth.				X	X	X							X	X				
47	Public Cable Television Authority				X	X								X					
48	Rancho Canada Financing Authority			X	X	X								X	X				
49	Rancho Santa Margarita Public Fin. Auth				X	X	X							X	X				
50	Saddleback Valley Unified Sch. Fin. Auth.				X	X								X					
51	San Joaquin Trans. Corridor Agency				X	X			X					X			X		
52	San Juan Basin Authority				X	X								X					
53	Santa Ana Financing Authority			X	X	X	X							X	X	X			
54	Santa Ana River Flood Protection Agency				X	X								X					
55	Santa Margarita-Dana Point Authority				X	X								X					
56	Santiago Aqueduct Commission				X	X								X					
57	School Employers Association of California				X	X								X					
58	Seal Beach Public Financing Authority			X	X	X	X							X	X	X			
59	South Coast Water District Financing Auth.				X	X								X					
60	South Orange County Public Financing Auth.				X	X								X					

Joint Powers Authorities: Issues of Viability, Control, Transparency, and Solvency

	Required Respondents	Findings										Recommendations							
		<u>F</u> <u>1</u>	<u>F</u> <u>2</u>	<u>F</u> <u>3</u>	<u>F</u> <u>4</u>	<u>F</u> <u>5</u>	<u>F</u> <u>6</u>	<u>F</u> <u>7</u>	<u>F</u> <u>8</u>	<u>F</u> <u>9</u>	<u>F</u> <u>10</u>	<u>R</u> <u>1</u>	<u>R</u> <u>2</u>	<u>R</u> <u>3</u>	<u>R</u> <u>4</u>	<u>R</u> <u>5</u>	<u>R</u> <u>6</u>	<u>R</u> <u>7</u>	<u>R</u> <u>8</u>
61	South Orange County Wastewater Auth.				X	X								X					
62	Southern Orange County Prop/Lia. Self Insu.				X	X								X					
63	Stanton Public Financing Authority	X		X	X	X	X						X	X	X	X			
64	The Foothill Trans. Corridor Agency				X	X			X					X			X		
65	Trabuco Canyon Public Financing Authority				X	X								X					
66	Tustin Public Financing Authority	X		X	X	X	X						X	X	X	X			
67	Tustin Unified School District Fin. Auth.				X	X	X							X	X				
68	West Cities Commun. Cntr. Joint Powers Auth.				X	X	X							X	X				
69	Western Orange County Self-Funded Comp				X	X								X					
70	Westminster Public Finance Authority	X		X	X	X	X						X	X	X	X			
71	Yorba Linda Public Finance Authority			X	X	X	X							X	X	X			

REFERENCES

Cypher, T. & Grinnell, C. (2007). *Governments Working Together: A Citizen's Guide to Joint Powers Agreements*. California State Legislature, Senate Local Government Committee Report.

State of California Constitution. *Article XVI. Section 18. "Debt"*.

State of California Government Code Section 6500. *Joint Exercise of Powers Act*

State of California Senate Bill No. 282. (2001). *Chapter 288, Amended Section 12463.1* [Government Code].

**MELLO-ROOS:
PERPETUAL DEBT ACCUMULATION
AND TAX ASSESSMENT
OBLIGATION**



GRAND JURY 2014-2015

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EXECUTIVE SUMMARY

Taxation without representation: Is there adequate oversight and auditing of Community Facility Districts within the County of Orange to protect the interests of the tax paying public?

A Community Facility District (CFD) is a legally constituted governmental entity for the purpose of financing public facilities and public services and collecting special property taxes, within specified CFD boundaries. To create a CFD, a two-thirds vote of property owners within the proposed district is required. The vote is conducted by the county registrar of voters. In a new subdivision, the developer may be the only owner at the time of the vote creating the CFD. The developer has a financial interest and profits from creation of the CFD. The vast majority of the CFDs in Orange County are created and debt incurred before any of the ultimate taxpayers acquire their property. There is little oversight of CFD's revenue, expenditures, and debt management by the public.

CFD funding and usage is not readily transparent and therefore not generally understood and its consequences are not appreciated by the general public. The problem is compounded by a lack of information available to the public on how CFD funds are being used. Many of the Orange County CFD formation documents and reports use general, vague language that does not meet the requirements and intent of the Mello-Roos Community Facilities Act of 1982.

BACKGROUND

Property taxes are collected by each county in order to provide for the common needs of the county, cities, special districts and school districts. Property taxes are ad valorem, based on the assessed real property value. These taxes can be used for infrastructure, public works, public services, and schools. In new housing developments, cities and special districts routinely required development contractors to construct the infrastructure including roads, sewers, parks, and schools and the costs were included in the price of homes.

Proposition 13

In the 1970s, California was faced with a period of severe inflation, and this was especially felt in the housing market. Property taxes averaged almost 3% of the market value with no statutory limits on tax rates or property assessments. These factors led to a grass roots revolt, resulting in an initiative that was placed on the State ballot— Proposition 13.

Proposition 13 was overwhelmingly passed by California voters in 1978 (62% of votes cast). This proposition rolled property taxes back to 1975 levels and restricted ad valorem (according to value) annual increases to an inflation factor not to exceed 2% each year. The new law also disallowed reassessment of a new base year except for (a) change in ownership or (b) completion of new construction.

In addition to decreasing property taxes, Proposition 13 also required a 2/3 majority in both State houses for future increases in other taxes, including income tax rates.

Community Facilities Districts (CFDs)

The passage of Prop 13 severely restricted local governments' ability to raise property taxes. There was a concerted effort to discover a way to fund public improvements and still remain in compliance with Proposition 13.

The Mello-Roos Community Facilities Act of 1982 (the Act), was passed by the State legislature to provide local government agencies an alternative method of obtaining community property tax funding to pay for local government public facilities and services (California Government Code, 1982, section 53312.5).

The Act allows any county, city, special district, school district, or joint powers authority to establish a Communities Facilities District (CFD), which permits financing of public improvements and services. CFDs are normally established in undeveloped areas and are used to construct infrastructure in new housing developments.

Forming a CFD

A CFD is a legally constituted government entity for the purpose of financing public facilities and public services and collecting special property taxes within specified CFD boundaries (California Government Code, 1982, § 53317). The first step in forming a CFD is to file a petition in support of the CFD signed by not less than 10% of registered voters residing in the proposed district. If the governing body agrees, an election is held requiring an affirmative vote by 2/3 of the property owners residing within the district at the time of the vote. The vote is conducted by the County Registrar of voters. In many cases, the only resident of the district is the owner/ developer (California Government Code, 1982, § 53319)

Once a CFD is approved, a special tax (lien) is placed against each property in the district and is paid on an annual basis. CFD bonds can be sold by the CFD to provide needed funding as specified in the Resolution of Formation document. Special taxes (CFD-T) are charged annually on the occupants' property tax bill to support the designated purpose of the CFD.

Land developers saw the opportunity to use CFD funding methodology to relieve them of the expense of building the public facilities (primarily infrastructure improvements) for their developments. It also allows them to reduce prices on homes, as they do not have to include the cost of the infrastructure in the price of homes. Additionally, cities and school districts saw the opportunity to use CFDs to obtain an additional funding source for the infrastructure and new schools in newly developed areas.

The special property tax paid by the homeowner is based on the number of subdivided parcels in the CFD. The tax is a special property tax, not an assessment, as there is no requirement that the tax be apportioned based on benefit to any property owner (California Government Code, 1982, section 53325.3). In addition, the public facilities need not be physically located within the CFD district, and there is no requirement that funds be used in the district paying the special tax (California Government Code, 1982, section 53313.5).

It is assumed that when a house is purchased and the CFD is disclosed, the purchaser agrees to the tax; this is referred to as “vote by purchase” (California, 1982, § 536313.5[2]). Special property taxes are listed on the homeowner’s property tax bill, usually by CFD-T number. They are collected by the County of Orange Tax Collector and are subject to all laws affecting general taxes.

A CFD does not have a “sunset” date unless one is specified in forming documents by the local entity creating the CFD (California Government Code, 1982, § 53338.5). The maximum term of bonds issued under a CFD shall not exceed 40 years. However, this applies only to the term of the bond. It does not place any restriction on the term of the CFD (§ 53351.e). The local legislative body creating the CFD may, after a public hearing, eliminate a type of facility or service but may not finance any facility or service not specified in resolution of formation (§ 53330.7). The creating legislative body is permitted to terminate a CFD; however, a CFD may not be terminated while a bond is still active (§ 53338.5).

REASON FOR THE STUDY

It is important that the property owners in Orange County be aware of the consequences of the Mello-Roos Act used by the local government agencies that govern them. Many homeowners, especially in south Orange County, are in a CFD, but the Grand Jury suspected that few understood how and why they were formed, how long they lasted, and how the funds were spent. The purpose of this study is to shed light on these specific issues.

METHODOLOGY

The Grand Jury utilized a variety of methods to collect information during the course of this investigation. The Act and its amendments were scrutinized, with special attention paid to the specificity of project descriptions, the length or “life” of the CFD, the duration of the CFD-issued bonded debt, and the use of the CFD bond funds for public services. Constituents of local agencies that created CFDs provided documents, and some of those agencies were interviewed for this report. The Grand Jury sent a detailed questionnaire to each of the 32 local agencies that have established nearly 100 CFDs. Proposition 13 was also analyzed to ascertain the limitations imposed on additional property taxation without a vote of the local constituents. In addition, the California Mello-Roos Community Facilities Districts Yearly Fiscal Status Reports were examined.

INVESTIGATION AND ANALYSIS

Mello-Roos/CFD legislation enabled local governments to obtain funding for public facilities and public services without a plebiscite (public vote). Mello-Roos is a special property tax on homeowners in a community, to be used for the repayment of bonds used to fund the infrastructure (roads, storm drains, sewers, waterlines, curbs, gutters, sidewalks, schools, parks, etc.) of the community, or to provide services such as police and fire. The special property tax is in addition to the ad valorem property tax and is based on acreage (typically, single-family lots). By statute, a CFD is also entitled to recover legal formation expenses as well as administrative costs.

Creation of CFDs

Prior to the passage of the Act, developers were often required to build the infrastructure and recover their expenditure by including the cost in the purchase price of homes. With the creation of CFDs, home developers got early funding for construction of infrastructure through CFD debt funding. This debt obligation was passed to the new homeowner to keep home prices at a lower level.

The Act allows local governments to create a CFD in a single parcel of land, typically a subdivision of single-family homes where there is a single developer/property owner. By statute, a CFD is established when 2/3s of the property owners vote for it. Since the developer is often the only property owner, the CFD is easily created. Not only are developers relieved of the cost of building the infrastructure, they may even profit from building the infrastructure as well.

As individual residential lots are sold, the new property owner takes on the tax burden created by the CFD bonds. The special tax is not an ad valorem tax; it is based on property plot size, in accordance to a predetermined formula. As an example, if a new CFD subdivision contains 1,000 single-family lots, a new property owner will pay 1/1000th of the CFD bond debt service and/or other tax fees specified in Resolution of Formation as a special property tax.

New homeowners can also be exposed to multiple CFD special taxes. New home developments often require the construction of schools, so an additional CFD might be formed which would result in an additional special property tax. Therefore, a new homeowner could be paying at least three annual property tax amounts: the ad valorem and two CFD-Ts. These special property taxes are listed on the homeowner's property tax bill, usually by CFD-T number.

CFDs and Proposition 13

Mello-Roos taxes provide an alternative funding source that is not subject to the strictures of Proposition 13. These restrictions include the requirement that 2/3 of the voters of a community must approve any proposed raise in ad valorem property taxes. In addition, Proposition 13 ad valorem taxes are subject to a cap, by statute; CFDs do not have a required special tax cap. It should also be noted that the controlling entity, such as a city or school district, still get their share of Proposition 13 taxes.

Ad valorem property taxes are deductible from federal and state income taxes. CFD-Ts may or may not be deductible. According to the Internal Revenue Service and the California Franchise Tax Board, the burden falls on the property owner/tax payer to establish a deduction if the CFD-T tax has been levied for the general public welfare.

Not all homes in Orange County are subject to CFD taxes. It is important to note that buying a home in a special tax district is strictly voluntary. Buyers considering moving into a special tax district are encouraged to do due diligence prior to purchase.

CFD Longevity

A CFD does not have an “end date,” unless one is specified in its resolution of formation by the establishing authority (California Government Code, 1982, § 53330.7). This means that potentially a CFD may continue in perpetuity. If bonds have been issued by a CFD, special taxes will be charged annually until the bond has been retired. A single bond may not be issued for a period longer than 40 years. However, this applies only to the term of the bond; it does not place any restriction of the term of the CFD (§ 53351.e). After bonds are paid off, a CFD tax may continue to be collected for maintenance of the facilities. In many instances, CFDs can refund bonds to take advantage of lower bond interest rates and then use the difference (spread) between the original interest rate and the new bond interest rate to create revenue to be used for other purposes. This call proviso will reset the 40-year period and potentially the CFD will continue in perpetuity.

The creating legislative organization may, after a public hearing, eliminate a type of facility or service; but it may not finance any facility or service not specified in the resolution of formation. The creating legislative body is permitted to terminate a CFD; however, a CFD may not be terminated while a bond is active. The controlling agency of the CFD clearly does not have any motivation or incentive to terminate a CFD since it would in effect eliminate an entity that is a ready-made organization for future debt obligations. The burden of that motivation remains with the tax paying public who pay the special CFD tax.

CFD Usage

The Mello-Roos Act specifically states that a legislative body may not finance any facility or service not specified in the resolution of formation. The Grand Jury found that CFDs often use vague language in the formation documents, which allows significant latitude as to how the funds will be used. The Grand Jury also found that CFDs do not clearly identify the specific uses or identify facilities to be built. The descriptions often are vague statements such as “public works,” “maintenance,” and “schools” which are very broad and do not have the detail that is required by the Act (California Government Code, 1982, § 53316.4, 53321, 53325.1(2) & 53330.7).

Accounting and Reporting

The Grand Jury discovered that the State does not require a complete accounting of the use of CFDs. The only information required by the State CDIAC is the original amount of bond funding, bond balance, taxes outstanding to be collected, and the end date of the bonds. Bond payment amount, interest rate, and administration costs are not reported.

Interestingly, the Act does not require that funds collected be used in the district paying the special tax. The Act also states that the public facilities need not be physically located within the CFD district (California Government Code, 1982, § 53313.5).

Oversight

The Mello-Roos Act (California Government Code, 1982, § 53343.1) states that the annual report shall include the following information for the fiscal year:

- (a) The amount of special taxes collected for the year.
- (b) The amount of other moneys collected for the year.
- (c) The amount of monies expended for the year.
- (d) A summary of the amount of money expended for the following:
 - (1) Facilities, including property.
 - (2) Services.
 - (3) The costs of bonded indebtedness.
 - (4) The costs of collecting the special tax under § 53340.
 - (5) Other administrative and overhead costs.
- (e) For moneys expended for facilities, including property, an identification of the categories of each type of facility funded with amounts expended in each category, including the total percentage of the cost of each type of facility that was funded with bond proceeds of special taxes.
- (f) For moneys expended for services, an identification of the categories of each type of facility funded with amounts expended in each category, including the total percentage of the cost of each type of facility that was funded with bond proceeds of special taxes.
- (g) For moneys expended for other administrative costs, an identification of each of these costs.
- (h) The annual report shall contain references to the relevant sections of the resolution of formation of the district so that interested persons may confirm that bond proceeds and special taxes are being used for authorized purposes.

The Grand Jury found that CFDs in Orange County do not appear to have any oversight committees or audit oversight to ensure the tenets of the Act are being followed. Orange County does not require a complete accounting of the use of CFD funds so that the homeowner can determine if the funds are being properly used. There also is no requirement to publically reveal maintenance or administrative costs.

CFD Transparency

The Grand Jury found that there is a significant lack of transparency regarding CFDs. Information pertaining to a CFD that is provided to the homeowner often does

not include the intended purposes of the special tax. Administrative costs and servicing costs of the bond are often not openly revealed.

The homeowner may receive information on a CFD-T by paying a fee to the legislative body (California Government Code, 1982, § 53343.1). The Grand Jury was advised that the fee is substantial, and the information provided by the legislative body is incomplete to the point of not being useful and not meeting the requirements of the law (§ 53343.1). It has been suggested to the Grand Jury that the only way to get good information is for the homeowner to request detailed accounting records (internal financial statements) of the CFD-T under the Freedom of Information Act.

Another relatively unknown fact is that a homeowner may go to the CFD legislative body and pay off the entire special property tax in one transaction. This would perpetually relieve the taxpayer from this burden (California Government Code, 1982, sections 53344 & 53321).

Orange County CFDs

Thirty-two (32) Orange County local public agencies have incurred a total of nearly \$2 billion in bonded long-term debt (see Appendix). These 32 agencies have established close to 100 CFDs; Orange County has 23 CFDs of its own. Each of these CFDs has incurred long-term bonded debt. Some of this debt will be paid into the mid-2030s, and beyond. The amount of debt will arguably obligate the CFD taxpayers to pay additional special property taxes, over and above their normal property taxes, far into the future.

An estimated \$2 billion in bonded debt has been accumulated by Orange County CFDs. Of that \$2 billion, \$1.3 billion (65%) has been incurred by the County of Orange and three school districts: Capistrano, Tustin, and Irvine. This total amount does not include a proposed City of Irvine CFD bond amount of \$384 million (Five Points Great Park), and a proposed County of Orange CFD bond amount of \$110 million (Village of Esencia). If these two CFDs sell bonds in their estimated amounts, the total local agency Mello-Roos/CFD debt in Orange County will be nearly \$2.5 billion.

The Act has a provision called “Rights to Accelerated Foreclosure.” It is very important for property owners to pay their tax bill on time, for the CFD has the right, and if bonds are issued, the obligation, to foreclose on a property when special taxes are delinquent for more than 90 days. The costs of collection and penalties can also be imposed on property owners. This provision makes the forfeiture process faster than the five-year waiting period required for ad valorem taxes.

FINDINGS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled “Community Facilities Districts (Mello-Roos): Perpetual Debt Accumulation and Tax Assessment Obligation,” the 2014-2015 Orange County Grand Jury has arrived at three principal findings, as follows:

- F.1.** There is a lack of transparency to homeowners relative to how CFD funds are being used.
- F.2.** There does not seem to be appropriate oversight and auditing of CFDs and special tax expenditures within the County of Orange.
- F.3.** While the assumption is that the CFD debt would be repaid in a finite period of time, there is a mechanism available to controlling entities to extend debt obligations and thereby extend the CFD special tax in perpetuity.

RECOMMENDATIONS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled “Community Facilities Districts (Mello-Roos): Perpetual Debt Accumulation and Tax Assessment Obligation”, the 2014-2015 Orange County Grand Jury makes the following two recommendations:

- R.1.** Each local agency that established the CFD should create an oversight committee and an audit committee to provide for an independent, transparent view of the manner in which CFD funds are being expended. (F.1, F.2)
- R.2.** Audit report information, as delineated in California Government Code, 1982 § 53343.1, should be made available to the CFD taxpayers on a website after each fiscal year for each CFD number. (F.1, F.2)

REQUIRED RESPONSES

The California Penal Code § 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected official shall comment on the findings and recommendations pertaining to the matters under that elected official’s control within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code § 933.05, subdivisions (a), (b), and (c), provides as follows, the manner in which such comment(s) are to be made:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section 933.05 are required for Findings F.1, F.2 and F.3 and for Recommendations R.1 and R.2 from the following organizations:

Orange County Board of Supervisors

The mayors and city councils of the following cities:

City of Anaheim

City of Brea

City of Buena Park

City of Cypress

City of Dana Point
City of Fullerton
City of Huntington Beach
City of Irvine
City of Mission Viejo
City of Orange
City of Placentia
City of San Clemente
City of Seal Beach
City of Tustin

Public Agencies:

Bonita Public Facilities Financing Authority–

A Joint Powers Authority under the Newport Mesa Unified School District and the City of Newport Beach

Brea Olinda Unified School District

Capistrano Unified School District

Fullerton Joint Union High School District

Fullerton School District

Irvine Unified School District

La Habra Redevelopment Agency –

A Redevelopment Agency under the City of La Habra

Laguna Beach Unified School District

Los Alamitos Unified School District

Newport-Mesa Unified School District

Orange Unified School District

Placentia – Yorba Linda Unified School District

Saddleback Unified School District

Tustin Unified School District

REFERENCES

California Government Code (1982). *Mello-Roos Community Facilities Act of 1982*. Sacramento, CA.

APPENDIX: ORANGE COUNTY CFDS LONG TERM DEBT

Community Facilities Districts - Mello Roos	Governance/Control	Name/ CFD Number	Original Bond Value	Principal Outstanding
Aliso Viejo	Multiple capital improvements, public works (Glenwood)	2005-01	\$34,070,000	\$33,945,000
Anaheim	Multiple capital improvements, public works (Platinum Triangle)	06-2	\$9,060,000	\$8,250,000
	Multiple capital improvements, public works (Platinum Triangle)	08-1	\$28,630,000	\$27,095,000
	Multiple capital improvements, public works((Sycamore Canyon)	1989-1	\$4,220,000	\$1,045,000
	Multiple capital improvements, public works((The Highlands)	1989-2	\$6,990,000	\$1,725,000
	Multiple capital improvements, public works((The Summit)	1989-3	\$9,085,000	\$1,530,000
Bonita Canyon Public Facilities Financing Authority	K-12 School Facility	98-1	\$38,330,000	\$37,735,000

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Community Facilities Districts - Mello Roos	Governance/Control	Name/ CFD Number	Original Bond Value	Principal Outstanding
Brea	Multiple capital improvements, public works((Fairway Ctr)	1988-1	\$2,580,000	\$1,900,000
	Multiple capital improvements, public works(Imperial Ctr East)	1990-1	\$1,478,000	\$158,000
	Multiple capital improvements, public works(Downtown)	1996-1	\$3,235,000	\$1,765,000
	Multiple capital improvements, public works(Olinda Heights)	1997-1	\$6,665,000	\$5,165,000
	Multiple capital improvements, public works(Brea Plaza area)	2008-2	\$8,145,000	\$8,095,000
Brea Olinda Unified School District	K-12 School Facility	95-1	\$2,300,000	\$2,300,000
	K-12 School Facility (Olinda Height)Refunding	95-1	\$6,440,444	\$4,995,000
Buena Park	Multiple capital improvements, public works(Mall)	2001-1	\$7,655,000	\$6,655,000
Capistrano Unified School District	K-12 School Facility (Refunding)	87-1	\$71,810,000	\$41,025,000
	K-12 School Facility (Refunding)	88-1	\$12,755,000	\$2,570,000
	K-12 School Facility (Talega)	90-2	\$49,675,000	\$47,335,000

Mello-Roos: Perpetual Debt Accumulation and Tax Assessment Obligation

Community Facilities Districts - Mello Roos	Governance/Control	Name/ CFD Number	Original Bond Value	Principal Outstanding
	K-12 School Facility (Talega)Refunding	90-2	\$44,980,000	\$40,820,000
	K-12 School Facility (Las Flores)	92-1	\$31,360,000	\$18,410,000
	K-12 School Facility (Ladera)	98-2	\$119,099,491	\$107,499,491
	K-12 School Facility (Rancho Madrina Sch. Facs & Cap Imp)	2004-1	\$7,085,000	\$6,725,000
Cypress	Multiple capital improvements, public works (Sorrento Homes)	1	\$9,705,000	\$3,785,000
Dana Point	Multiple capital improvements, public works (Headlands Rev Dev.)	2006-1	\$8,710,000	\$0
	Multiple capital improvements, public works (Headlands Rev Dev)(Refunding)	2006-1	\$17,885,000	\$17,885,000
Fullerton	Multiple capital improvements, public works (Amerige Heights)	1	\$21,375,000	\$0
	Multiple capital improvements, public works (Amerige Heights) (Refunding)	1	\$19,040,000	\$19,040,000

Community Facilities Districts - Mello Roos	Governance/Control	Name/CFD Number	Original Bond Value	Principal Outstanding
Fullerton Joint Union High School District	K-12 School Facility (District & Buena Park Sch. Facs)	2005-1	\$2,050,000	\$1,785,000
Fullerton School District	Other, multiple educational use	2000-1	\$1,195,000	\$960,000
	K-12 School Facility	2001-1	\$9,725,000	\$7,757,500
	Parks, open space	2001-1	\$9,725,000	\$3,878,750
Huntington Beach	Multiple capital improvements, public works (Goldenwest/Ellis Area)(Refunding)	1990-1	\$2,155,000	\$1,145,000
	Multiple capital improvements, public works(Grand Coast Resort)	2000-1	\$16,000,000	\$13,330,000
	Multiple capital improvements, public works(McDonnell Centre Business PK)	2002-1	\$4,900,000	\$4,670,000
	Multiple capital improvements, public works(Huntington Ctr Bella Terra)	2003-1	\$25,000,000	\$21,595,000
Irvine	Multiple capital improvements, public works(Columbus Grove)	2005-2	\$24,375,000	\$21,540,000

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Community Facilities Districts - Mello Roos	Governance/Control	Name/ CFD Number	Original Bond Value	Principal Outstanding
	Multiple capital improvements, public works(Columbus Grove) Refunding	2005-2	\$16,975,000	\$16,975,000
Irvine Unified School District	K-12School facility (Bond) Refunding	86-1	\$96,565,000	\$73,685,000
	K-12School facility (S Irvine Communities) Refunding	01-1	\$103,475,000	\$99,715,000
	Multiple capital improvements, public works(Northwood Master Planned Community)	04-1	\$9,000,000	\$8,745,000
	Multiple capital improvements, public works (Woodbury Master IA A Planned Community)	04-2	\$38,000,000	\$35,903,130
	Multiple capital improvements, public works (Woodbury Master IA B Planned Community)	04-2	\$23,935,000	\$21,610,000
	K-12 School facility (Portola Springs) (Refunding)	06-1	\$13,075,000	\$6,715,000
	K-12 school facility (Qualified School Construction Bond)	09-1	\$25,000,000	\$25,000,000
	K-12 school facility (Series A)	09-1	\$63,640,000	\$63,640,000
K-12 school facility (Series B)	09-1	\$50,000,000	\$50,000,000	

Community Facilities Districts - Mello Roos	Governance/Control	Name/ CFD Number	Original Bond Value	Principal Outstanding
La Habra Redevelopment Agency	Multiple capital improvements, public works (Marketplace) (Refunding)	1990-1	\$3,185,000	\$154,000
Laguna Beach Unified School District	K-12 school facility (Refunding)	98-1	\$9,970,000	\$0
	Multiple capital improvements, public works (Crystal Cove) (Refunding)	98-1	\$9,330,000	\$9,330,000
Los Alamitos Unified School District	K-12School facility Refunding	90-1	\$3,240,000	\$0
	K-12School facility Refunding Measure K	90-1	\$3,240,000	\$0
Mission Viejo	Flood Control, Storm Drainage(LaPaz channel) (Refunding)	92-1	\$2,060,000	\$1,670,000
Newport-Mesa Unified School District	K-12School facility Refunding	90-1	\$20,735,000	\$0
	K-12School facility Refunding	90-1	\$9,720,000	\$9,720,000

Community Facilities Districts - Mello Roos	Governance/Control	Name/ CFD Number	Original Bond Value	Principal Outstanding
Orange	Multiple capital improvements, public works(Serrano Heights Pub Imp) (Series A) Refund	91-2	\$35,330,000	\$0
	Multiple capital improvements, public works (Serrano Heights Pub Imp) (Series B) Refund	91-2	\$2,200,000	\$0
	Multiple capital improvements, public works (Serrano Heights Pub Imp) Refund	91-2	\$28,810,000	\$28,810,000
	Multiple capital improvements, public works (Del Rio)	06-1	\$24,975,000	\$24,945,000
Orange County	Multiple capital improvements, public works (Rancho Santa Margarita) Refund	86-1	\$32,335,000	\$11,665,000
	Multiple capital improvements, public works(Rancho Santa Margarita/Saddleback) Refund	86-2	\$10,975,000	\$598,000
	Bridges and Highways(Rancho Santa Margarita) Refund	86-2	\$8,005,000	\$1,100,000
	Commercial development Bus Pk (Refunding)	87-1	\$762,808	\$743,414
	Multiple capital improvements, public works(Portola Hills) Refund	87-2	\$24,080,000	\$4,530,000

Community Facilities Districts - Mello Roos	Governance/Control	Name/ CFD Number	Original Bond Value	Principal Outstanding
	Multiple capital improvements, public works(Mission Viejo) Refund	87-3	\$49,697,035	\$10,988,000
	Multiple capital improvements, public works(Foothill Ranch) Refund	87-4	\$71,435,333	\$25,179,820
	K-12 School facility(Foothill Ranch)	87-4	\$10,815,000	\$5,865,000
	Multiple capital improvements, public works(Rancho Santa Margarita) Refund	87-5A	\$8,863,770	\$924,268
	Multiple capital improvements, public works(Rancho Santa Margarita) Refund	87-5B	\$27,396,720	\$7,639,334
	Multiple capital improvements, public works(Rancho Santa Margarita) Refund	87-5C	\$15,221,979	\$5,363,907
	Multiple capital improvements, public works(Rancho Santa Margarita) Refund	87-5D	\$12,042,509	\$4,746,180
	Multiple capital improvements, public works(Rancho Santa Margarita) Refund	87-5E	\$12,780,000	\$5,385,000
	Multiple capital improvements, public works(Baker Ranch) Refund	87-6	\$9,330,000	\$1,860,000

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Community Facilities Districts - Mello Roos	Governance/Control	Name/CFD Number	Original Bond Value	Principal Outstanding
	Multiple capital improvements, public works(Los Alisos) Refund	87-7	\$17,425,000	\$3,475,000
	Street construction and improvement (Coto de Caza) Refunding	87-8	\$30,412,976	\$10,894,283
	Multiple capital improvements, public works(Los Alisos) Refund	87-9	\$4,050,000	\$805,000
	Multiple capital improvements, public works(Santa Teresita)	87-9	\$2,335,000	\$475,000
	Multiple capital improvements, public works(Aliso Viejo) Refund	88-1	\$207,845,000	\$31,455,000
	Multiple capital improvements, public works(Lomas Laguna) Refund	88-2	\$1,775,000	\$340,000
	Multiple capital improvements, public works(Lomas Laguna) Refund	99-1	\$22,560,000	\$19,505,000
	Multiple capital improvements, public works(Ladera Ranch) Refund	2001-1	\$28,890,000	\$25,130,000
	Multiple capital improvements, public works(Ladera Ranch) Refund	2001-1	\$32,565,000	\$29,315,000
	Multiple capital improvements, public works(Ladera Ranch)	2002-1	\$68,280,000	\$64,495,000

Community Facilities Districts - Mello Roos	Governance/Control	Name/CFD Number	Original Bond Value	Principal Outstanding
	Multiple capital improvements, public works(Ladera Ranch)	2003-1	\$57,185,000	\$54,825,000
	Multiple capital improvements, public works(Ladera Ranch)	2004-1	\$75,645,000	\$71,745,000
Orange Unified School District	K-12 school facility (Santiago Hills) Refunding	88-1	\$4,625,000	\$900,000
	K-12 school facility (Sycamore Canyon) Refunding	89-1	\$4,250,000	\$740,000
	K-12 school facility Refunding	89-2	\$9,095,000	\$1,780,000
	K-12 school facility Tremont School & City Facs	2005-1	\$654,000	\$6,385,000
	K-12 school facility (Del Rio Riverbend) Refunding	2005-2	\$5,920,000	\$5,785,000
Placentia		89-1		\$0
Placentia - Yorba Linda Unified School District	K-12 school facility	1	\$5,505,000	\$0
	K-12 school facility Refunding	1	\$6,730,000	\$6,730,000
Saddleback Valley Unified School District	K-12 school facility	88-1	\$2,365,000	\$1,490,000
	K-12 school facility (Town Center)	88-1	\$8,635,000	\$5,280,000
	K-12 school facility (Rancho Cielo) Refunding	88-2	\$3,525,000	\$1,270,000

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Community Facilities Districts - Mello Roos	Governance/Control	Name/ CFD Number	Original Bond Value	Principal Outstanding
	K-12 school facility (Robinson Ranch) Refunding	89-1	\$8,250,000	\$3,190,000
	K-12 school facility Refunding	89-2	\$15,686,602	\$6,731,602
	K-12 school facility (Rancho Trabuco) Refunding	89-2	\$3,208,398	\$1,890,000
	K-12 school facility Refunding	89-3	\$12,213,718	\$5,238,718
	K-12 school facility (Rancho Trabuco) Refunding	89-3	\$891,282	\$525,000
	K-12 school facility (Dove Canyon) Refunding	89-4	\$4,465,000	\$535,000
	K-12 school facility (Dove Canyon) Refunding	89-4	\$970,000	\$955,000
San Clemente	Multiple capital improvements, public works Refund	99-1	\$5,005,000	\$4,850,000
Santa Ana Unified School District	K-12 school facility Central Park(School Facs, Irvine Ranch WD & Orange County Fire Authority)	2004-1	\$11,785,000	\$11,355,000
Santa Margarita Water District	Water supply, storage, distribution (Talega) Refunding	99-1	\$63,480,000	\$58,290,000
	Multiple capital improvements, public works(Talega A&B) Refund	99-1	\$38,710,000	\$37,920,000

Community Facilities Districts - Mello Roos	Governance/Control	Name/ CFD Number	Original Bond Value	Principal Outstanding
Seal Beach	Multiple capital improvements, public works(Heron Point)	2002-01	\$3,985,000	\$3,610,000
	Multiple capital improvements, public works(Pacific Gateway Business Ctr.)	2005-01	\$8,800,000	\$8,595,000
Tustin	Flood control, storm drainage (Tustin Legacy/ john Laing Homes)	04-1	\$11,415,000	\$9,845,000
	Multiple capital improvements, public works (Tustin Legacy/ john Laing Homes)Refunding	04-1	\$9,350,000	\$9,350,000
	Multiple capital improvements, public works (Legacy & Columbia Villages Zones 1&2)	06-1	\$53,570,000	\$52,580,000
	Multiple capital improvements, public works (Legacy & Columbia Villages Zones 1&2)	06-1	\$1,675,000	\$1,600,000
	Multiple capital improvements, public works (Legacy/Retail Center)	07-1	\$13,680,000	\$13,550,000
Tustin Unified School District	K-12 Schools Facility-(Tustin Ranch)Refunding	88-1	\$64,615,000	\$47,955,000

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Mello-Roos: Perpetual Debt Accumulation and Tax Assessment Obligation

Community Facilities Districts - Mello Roos	Governance/Control	Name/ CFD Number	Original Bond Value	Principal Outstanding
	K-12 Schools Facility-Sr Series A Refunding	97-1	\$87,697,675	\$83,332,675
	K-12 Schools Facility-Sr Series B Refunding	97-1	\$14,090,000	\$13,220,000
	K-12 Schools Facility-Elementary, Middle, High (Columbus Square)	06-1	\$13,560,000	\$13,545,000
	K-12 school facility Refunding	07-1	\$90,500,000	\$90,500,000
Total Districts		Total CFDs	Original Bond Value	Principal Outstanding
32		119	\$2,701,562,740	\$1,909,301,072

(Grand Jury, 2014-2015)

UNFUNDED RETIREE HEALTHCARE OBLIGATIONS- A PROBLEM FOR PUBLIC AGENCIES?



GRAND JURY 2014-2015

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EXECUTIVE SUMMARY

When local government employees retire from service in Orange County, their employment often allows them to continue purchasing health insurance through the agency (city or county) for which they had been employed. They may also receive a stipend from that agency to help pay for these health insurance premiums. These benefits are known as Other Post-Employment Benefits, or OPEB in governmental accounting terms. Until 2004, these costs were considered routine operating expenses that were paid from an agency's general fund. As a result, historically, local agencies did not make any provisions to estimate the amount of funds that would be required in the future and did not set money aside to make sure the employers were able to make these payments when they came due. In 2004, the Governmental Accounting Standards Board (GASB) issued Statement No.45 "Accounting and Financial Reporting by Employers for Postemployment Benefits Other than Pensions" in an effort to improve financial reporting by state and local government agencies. The objective of issuing this directive was to require governments to improve their accounting practices. These changes were required to meet certain financial reporting goals that were not being met. These goals were:

1. Recognize the cost of benefits in periods when the related services are received by the employer.
2. Provide information about the actuarial accrued liabilities for promised benefits associated with past services and whether and to what extent these benefits have been funded.
3. Provide information useful in assessing potential demands on the employers future cash flows.

The Orange County Grand Jury (OCGJ) reviewed the data provided in the investigated agencies' financial statements for the fiscal year ended June 30, 2013, to locate the information identified above. The inquiry determined that the combined Unfunded Retiree Health Obligation for the 36 (less four non-reporting cities) agencies was \$1.1 billion as of June 30, 2013, which were derived from the Comprehensive Annual Financial Reports (CAFRs). This is a significant amount, especially when combined with the Unfunded Pension Liability of \$5.7 billion. The OCGJ further determined that less than 30% of the agencies surveyed recognized the full annual cost of the OPEB expense, with most not recognizing the deferred benefit as earned compensation of current employees. The analysis of the potential demands on the employer's future cash flows revealed that certain agencies were at far greater risk of encountering issues with future cash flows than others due to the higher benefits promised to retirees in the past and lack of efforts to fund the liability at present.

BACKGROUND

(A Glossary of Terms is provided in the Appendix.)

Overview

In 1961 the State of California (State) began to offer State workers retiree healthcare benefits because workers were at risk of losing their health care coverage

upon retirement. This loss to the retiree may have resulted because the high premium cost was more than the retiree could afford, or the retiree had a health condition that resulted in insurers denying coverage. Local governments followed suit, and many cities and local agencies began offering health care benefits to retirees. This is true today even though conditions have changed; for example, today government workers are eligible for federal Medicare at age 65 or through the Affordable Care Act.

All 34 cities in Orange County, as well as the County of Orange (County) and the Orange County Fire Authority (OCFA), offer their employees some form of retiree health care benefits. In many agencies, if a retiree purchases health insurance through the agency that they retired from, that agency may choose to contribute a minimal amount. This amount is established by the Public Employees Medical and Hospital Care Act (PEMHCA) and helps to offset the retiree's health insurance premium. Some agencies provide generous benefits that may pay up to 90% of the premium cost for retirees. Until 2004, most local government agencies accounted for the costs of paying for retiree benefits as a cost of doing business and charged the costs to ongoing expenses.

In 2004, the Governmental Accounting Standards Board (GASB), an organization that oversees how governments account for their financial activities, examined this pay-as-you-go policy used to account for the health care benefits payables. The GASB concluded that this approach is not a sound accounting practice for three reasons. First, it did not allow the government entity or the public to know what the actuarial accrued liabilities for health benefits are which have been promised to retirees. Second, it did not provide information about whether the government entity had the funds to pay for these costs annually as well as in the future. Third, it did not match the expense of the benefit in the period that it was earned/incurred.

GASB Statement No. 45 Reporting Requirements

In order to correct the above accounting and information issues, the GASB, through GASB Statement No. 45, required government agencies to do the following:

1. Authorize an actuarial or alternate measurement study done which assesses how much the agency will have to pay for medical benefits in the future based on the life expectancy of current employees as well as retirees for whom benefits are being paid. This calculated amount is known as the Accrued Actuarial Liability (AAL).
2. Calculate the annual amount that the agency will have to pay every year to make sure that all future obligations are met. This amount is known as the Annual Required Contribution (ARC).
3. Disclose the cumulative amount owed to retirees for the health care benefits promised or Accrued Actuarial Liability (AAL) as well as the amount of monies the employer has put aside in an irrevocable trust to pay for the future liability (Contributed Amount).
4. Compare the ARC to the annual payroll cost of the employer to assess potential demands on the employers' future cash flow.
5. Recognize the cost of benefits in periods which the related services are received (including the benefit as compensation to the employee that has

earned it even though the employee does not collect the benefit until after retirement).

Orange County cities, the County, and the OCFA all provide retiree health benefits that are funded at varying levels. This report provides the citizens of the County a snapshot of the overall financial situation regarding retiree health benefits promised by local agencies.

REASON FOR THE STUDY

The main purpose of this study is to quantify the full extent of the financial liability for retiree health benefits facing the County's 34 cities, the County, and the OCFA. The goal is to determine how much is owed in total by these 36 agencies and how much each agency has to contribute each year to meet its obligation to pay for the benefit.

The State's Legislative Analyst Office (LAO) Report in 2015 stated that retiree healthcare is "the state's last major liability that needs a funding plan" (Legislative, 2015). According to the LAO, the "unfunded liability" for retiree healthcare promised to state workers over the next 30 years is \$72 billion, which is greater than the \$50 billion unfunded liability for state worker pensions reported by the California Public Employees Retirement System (CalPERS) in 2014. In light of the LAO report, the Orange County Grand Jury (OCGJ) decided it was advisable to determine the level of the liability for retiree healthcare costs facing the taxpayers of the County.

In addition to determining the magnitude of the liability, the OCGJ also considered it advisable to see how many public agencies were complying with the requirements and recommendations put forward by the GASB in Statement No. 45, as they play an important role in transparency by revealing the full extent of future costs and public liabilities of retiree health benefits. In addition, the analysis provided by the OCGJ provides quantitative information regarding each public entity's progress in addressing the important issue of unfunded liability.

METHODOLOGY

The method of investigation adopted by the OCGJ was mainly through document and literature reviews.

The historical origins of the retiree health benefit provisions by local agencies were studied and analyses were done on the subject of post-employment benefits and the issues involved in reporting and paying for these benefits.

The research included a review of the accounting literature as it pertains to the recognition of these expenses and the correct presentation of this data in the financial reports of local agencies.

The OCGJ decided to examine the financial statements of the 34 cities of Orange County, the County of Orange, and the Orange County Fire Authority to determine if these agencies were complying with the disclosure requirements imposed on them by GASB Statement No. 45. The OCGJ also obtained an understanding of the potential

demands on the agencies' future cash flows based on the annual cost, as well as the accumulated liability, for their Other Post Employment Benefit obligations.

The Comprehensive Annual Financial Reports (CAFR) for the year ending June 30, 2013, were obtained from the agencies' websites and analyzed by the OCGJ. The "Notes to the Financial Statements" were analyzed for the required information and data regarding balance sheet liabilities. General Fund annual expenditures were also obtained for analysis purposes. In cases where a disclosure was missing, the agencies were contacted by mail and were requested to provide the information to the OCGJ. The resulting data gathered was analyzed to provide insight into the level of liability for healthcare that the agencies are responsible for, as well as annual expenses incurred by each agency.

INVESTIGATION AND ANALYSIS

The investigation yielded a significant amount of data. The following tables lay out the nature of the data collected and support the conclusions drawn from the data. The OCGJ had access to information regarding the AAL calculated for each agency by an external actuary or, in a few cases, by using an alternate measurement method prescribed by the GASB; and was also able to determine the amount of funding that the agencies had put in an irrevocable trust. In addition to the data on the extent of the liability and the annual required contribution to be made by an agency, the OCGJ collected information on the amount of General Fund liabilities and expenditures for the FY 2012-13. The Grand Jury also analyzed the population of each jurisdiction to assess the impact of that agency's annual OPEB costs on its residents.

Table 1: List of Orange County Cities/Agencies Reviewed

1	Aliso Viejo	19	Lake Forest
2	Anaheim	20	Los Alamitos
3	Brea	21	Mission Viejo
4	Buena Park	22	Newport Beach
5	Costa Mesa	23	Orange
6	Cypress	24	Placentia
7	Dana Point	25	Rancho Santa Margarita
8	Fountain Valley	26	San Clemente
9	Fullerton	27	San Juan Capistrano
10	Garden Grove	28	Santa Ana
11	Huntington Beach	29	Seal Beach
12	Irvine	30	Stanton
13	La Habra	31	Tustin
14	La Palma	32	Villa Park
15	Laguna Beach	33	Westminster
16	Laguna Hills	34	Yorba Linda
17	Laguna Niguel	35	County of Orange
18	Laguna Woods	36	Orange County Fire Authority

The data collected were for the 34 cities in Orange County, the County, and the OCFA (see Table 1). The last two agencies (County and OCFA) were included because many County cities contract with the County Sheriff's Department and the OCFA for police and/or fire services, and do not have a local police and/or fire department. To fully estimate the liability for post-employment healthcare costs for County agencies (and ultimately residents), the information related to the County agencies needs to be included.

GASB 45 Requirement: Authorize Actuarial Study

A review of the data collected from the Comprehensive Annual Financial Reports (CAFRs) of the 36 entities revealed that four cities did not have the disclosures in their CAFR regarding retiree healthcare obligations. As a result, the OCGJ concluded that these cities did not comply with the GASB Statement No. 45 requiring them to conduct an actuarial or alternative measurement study, to estimate the annual required contribution and the amount of the actuarial obligation. These cities were Aliso Viejo, Dana Point, Laguna Hills, and Villa Park. The City of Laguna Woods also did not disclose GASB Statement No. 45 in the annual CAFR, but provided the information to the OCGJ when requested. The Grand Jury followed up with a questionnaire to each of the above four cities.

It is the opinion of the OCGJ that if a city or agency is subject to PEMHCA, the agency is providing post-employment healthcare benefits even if it is at a very low level. Since all California cities that allow their retirees to purchase health insurance are subject to PEMCHA and are required to provide a subsidy to retirees towards the payment for healthcare premiums, it is important that each of the four cities listed above review their policies to determine if they are, in fact, exempt from GASB Statement No. 45 reporting.

GASB 45 Requirement: Calculate & Disclose Annual ARC

The OCGJ reviewed the Comprehensive Annual Financial Reports for the year ended June 30, 2013, and was able to determine the level of ARC for the year by each agency (see Table 2). The total annual cost is almost \$100 million dollars for the 32 entities that provided this information.

To assess the how significant this cost was to the agencies, the OCGJ decided to compare the Annual OPEB Cost (which is the ARC less any payments already made in the current year) for each agency to its General Fund Expenditures for the same period.

The data in Table 3 indicates the annual OPEB cost (AOPEBC) on average was 2% of General Fund Expenses (GFEXP). However, in Westminster the OPEB cost was over 9% of annual expenditures, which is significantly higher than the survey average. Six cities had AOPEBC that were more than double the average. Cities with higher than average AOPEBC/GFEXP ratios may encounter difficulty in meeting their obligations in the case of an economic downturn when their revenues are reduced.

Table 2: Annual Required Contribution of Orange County Agencies

	Agency	Annual Required Contribution (ARC)
1	Anaheim	\$8,694,000
2	Brea	\$1,443,000
3	Buena Park	\$563,749
4	Costa Mesa	\$2,146,578
5	Cypress	\$519,000
6	Fountain Valley	\$2,533,000
7	Fullerton	\$3,860,848
8	Garden Grove	\$925,657
9	Huntington Beach	\$1,561,000
10	Irvine	\$679,000
11	La Habra	\$615,000
12	La Palma	\$159,370
13	Laguna Beach	\$153,301
14	Laguna Woods	\$14,924
15	Laguna Niguel	\$242,811
16	Lake Forest	\$50,024
17	Los Alamitos	\$243,447
18	Mission Viejo	\$736,000
19	Newport Beach	\$2,806,000
20	Orange	\$989,285
21	Placentia	\$2,198,487
22	Rancho Santa Margarita	\$45,299
23	San Clemente	\$139,542
24	San Juan Capistrano	\$114,894
25	Santa Ana	\$2,732,000
26	Seal Beach	\$502,000
27	Stanton	\$177,000
28	Tustin	\$1,195,094
29	Westminster	\$4,878,000
30	Yorba Linda	\$1,748,362
31	County of Orange	\$42,713,000
32	OCFA	\$14,307,307
	Total ARC	\$99,686,979

Source: Annual Comprehensive Financial Reports for FY 2012-13 obtained from agency websites

Table 3: Annual Cost as a Percentage of General Fund Expenditures

	Cities/Agencies	Annual OPEB Costs (AOPEBC)	Total General Fund Expenditures (GFEXP)	AOPEBC/GFEXP Percentage
1	Westminster	\$4,272,000	\$44,977,980	9.5%
2	Fountain Valley	\$2,533,000	\$38,207,193	6.6%
3	Yorba Linda	\$1,583,193	\$26,255,575	6.0%
4	Laguna Woods	\$226,947	\$4,095,104	5.5%
5	Placentia	\$1,375,364	\$25,061,558	5.5%
6	Fullerton	\$3,877,097	\$74,222,592	5.2%
7	OCFA	\$13,689,125	\$285,518,241	4.8%
8	Anaheim	\$8,574,000	\$238,154,000	3.6%
9	Brea	\$1,324,000	\$53,866,984	2.5%
10	Costa Mesa	\$2,153,804	\$90,115,525	2.4%
11	Los Alamitos	\$243,447	\$11,513,015	2.1%
12	Seal Beach	\$507,830	\$25,610,260	2.0%
13	Newport Beach	\$2,806,000	\$143,834,937	2.0%
14	Cypress	\$462,249	\$23,834,348	1.9%
15	Tustin	\$1,034,400	\$54,837,976	1.9%
16	La Palma	\$155,293	\$9,159,937	1.7%
17	La Habra	\$556,000	\$33,355,966	1.7%
18	County of Orange	\$42,497,000	\$2,654,002,000	1.6%
19	Mission Viejo	\$747,497	\$48,447,473	1.5%
20	Santa Ana	\$2,785,000	\$184,442,950	1.5%
21	Buena Park	\$636,448	\$49,520,579	1.3%
22	Stanton	\$177,000	\$14,881,860	1.2%
23	Orange	\$931,833	\$89,018,039	1.0%
24	Garden Grove	\$941,164	\$90,026,024	1.0%
25	Huntington Beach	\$1,484,000	\$185,015,000	0.8%
26	San Juan Capistrano	\$113,595	\$20,066,475	0.6%
27	Irvine	\$666,000	\$155,031,000	0.4%
28	Rancho Santa Margarita	\$48,968	\$14,301,268	0.3%
29	San Clemente	\$139,542	\$45,678,277	0.3%
30	Laguna Beach	\$150,021	\$59,572,597	0.3%
31	Lake Forest	\$50,024	\$36,884,211	0.1%
32	Laguna Niguel	\$11,965	\$27,468,565	0.0%
	TOTALS	\$96,753,806	\$4,856,977,509	2.0%

Source: Annual Comprehensive Financial Reports for FY 2012-13 obtained from agency websites

GASB 45 Requirement: Disclose Cumulative Amount Owed to Retirees

The level of overall liability recorded by the various agencies was quite significant. Table 4 displays the amount of the actuarial liability for each of the 32 agencies, which totals almost \$1.3 billion. There are some agencies that have contributed towards funding the deficit, thereby reducing the unfunded portion of their AAL.

Table 4: Retiree Health Benefit Liability

	Cities/Agencies	Most Recent Accrued Actuarial Liability (AAL)		Cities/Agencies	Most Recent Accrued Actuarial Liability (AAL)
1	County of Orange	\$528,639,000	18	Mission Viejo	\$7,500,000
2	Anaheim	\$201,108,000	19	Seal Beach	\$6,902,000
3	OCFA	\$156,623,184	20	La Habra	\$5,879,000
4	Westminster	\$62,216,000	21	Irvine	\$5,407,000
5	Santa Ana	\$44,238,000	22	Los Alamitos	\$2,724,394
6	Fullerton	\$37,800,000	23	La Palma	\$1,893,010
7	Costa Mesa	\$36,429,075	24	Cypress	\$1,725,000
8	Newport Beach	\$35,922,000	25	San Clemente	\$1,432,716
9	Fountain Valley	\$35,418,000	26	Laguna Beach	\$1,346,828
10	Placentia	\$23,732,646	27	San Juan Capistrano	\$1,207,808
11	Huntington Beach	\$20,200,000	28	Laguna Niguel	\$865,981
12	Yorba Linda	\$18,725,000	29	Stanton	\$771,000
13	Brea	\$18,197,000	30	Lake Forest	\$499,136
14	Orange	\$11,873,809	31	Rancho Santa Margarita	\$272,705
15	Garden Grove	\$10,633,859	32	Laguna Woods	\$106,225
16	Tustin	\$9,800,000	Total AAL		\$1,297,588,376
17	Buena Park	\$7,500,000	Funding Contributed		\$244,591,329
			Unfunded Liability		\$1,052,997,047

Source: Annual Comprehensive Financial Reports for FY 2012-13 obtained from agency websites

GASB Statement No. 45 requires agencies to recognize 100% of the AOPEBC every year. An analysis was undertaken to determine whether the agencies had been booking their AOPEBC in full. Table 5 presents the results of that analysis. Note that 26 of the 32 agencies were not complying with this GASB requirement, while five agencies were contributing more than their requirement and essentially prefunding their liability.

Table 5: Contributions as a Percentage of Cost

	Cities/Agencies	Annual OPEB Cost (AOPEBC)	Actual Contributions (AC)	% of Cost Contributed (AC/AOPEBC)
1	Lake Forest	\$50,024	\$247,263	494.3%
2	Huntington Beach	\$1,484,000	\$2,683,000	180.8%
3	Anaheim	\$8,574,000	\$9,826,000	114.6%
4	County of Orange	\$42,497,000	\$48,446,580	114.0%
5	Buena Park	\$636,448	\$659,520	103.6%
6	Stanton	\$177,000	\$177,000	100.0%
7	Seal Beach	\$507,830	\$502,000	98.9%
8	Mission Viejo	\$747,497	\$736,000	98.5%
9	Costa Mesa	\$2,153,804	\$1,727,148	80.2%
10	Laguna Beach	\$150,021	\$115,181	76.8%
11	Placentia	\$1,375,364	\$1,053,529	76.6%
12	La Palma	\$155,293	\$108,299	69.7%
13	Irvine	\$666,000	\$430,902	64.7%
14	Fountain Valley	\$2,533,000	\$1,613,268	63.7%
15	Brea	\$1,324,000	\$776,718	58.7%
16	Westminster	\$4,272,000	\$2,206,588	51.7%
17	Los Alamitos	\$243,447	\$122,503	50.3%
18	Fullerton	\$3,877,097	\$1,593,988	41.1%
19	Yorba Linda	\$1,583,193	\$583,255	36.8%
20	Tustin	\$1,034,400	\$372,160	36.0%
21	Garden Grove	\$941,164	\$327,517	34.8%
22	OCFA	\$13,689,125	\$4,759,104	34.8%
23	Orange	\$931,833	\$323,234	34.7%
24	Santa Ana	\$2,785,000	\$874,000	31.4%
25	San Juan Capistrano	\$113,595	\$33,801	29.8%
26	Cypress	\$462,249	\$117,249	25.4%
27	La Habra	\$556,000	\$137,000	24.6%
28	San Clemente	\$139,542	\$33,125	23.7%
29	Rancho Santa Margarita	\$48,968	\$4,750	9.7%
30	Laguna Woods	\$11,965	\$673	5.6%
31	Laguna Niguel	\$226,947	\$6,748	3.0%
32	Newport Beach	\$2,806,000	\$0	0.0%
	Totals	\$96,753,806	\$80,598,103	83.3%

Source: Annual Comprehensive Financial Reports for FY 2012-13 obtained from agency websites

The OCGJ also analyzed the data to determine how many agencies had set up a trust fund to help fund their retiree health care liability, as recommended by GASB Statement No. 45 (Governmental, 2004). The review disclosed that only 11 of the 32 agencies that had submitted data had started such a trust fund. These trust funds

convert the liability from unfunded to a funded category that reduces financial exposure and risk to the public.

As shown in Table 6, the combined AAL was less than 20% funded as of June 30, 2013. While some agencies contributed a significant amount in funding the health care obligations for retirees, some agencies did not contribute any money.

**Table 6: Contributions to Retiree Healthcare Trust Fund:
Accrued Actuarial Liability (AAL)**

	Cities/Agencies	Assets Contributed		Cities/Agencies	Assets Contributed
1	County of Orange	\$116,804,000	19	La Palma	0
2	Anaheim	\$67,747,000	20	Laguna Beach	0
3	OCFA	\$28,910,090	21	Laguna Woods	0
4	Huntington Beach	\$9,600,000	22	Laguna Niguel	0
5	Newport Beach	\$7,889,000	23	Los Alamitos	0
6	Fountain Valley	\$6,068,000	24	Orange	0
7	Mission Viejo	\$4,300,000	25	Placentia	0
8	Seal Beach	\$1,738,000	26	Rancho Santa Margarita	0
9	Stanton	\$585,000	27	San Clemente	0
10	Buena Park	\$500,000	28	San Juan Capistrano	0
11	Lake Forest	\$450,239	29	Santa Ana	0
12	Brea	0	30	Tustin	0
13	Costa Mesa	0	31	Westminster	0
14	Cypress	0	32	Yorba Linda	0
15	Fullerton	0			
16	Garden Grove	0		Total Contributed	\$244,591,329
17	Irvine	0		Total AAL	\$1,297,588,376
18	La Habra	0		Percent of AAL Contributed	18.85%

Source: Annual Comprehensive Financial Reports for FY 2012-13 obtained from agency websites

To assess the impact of the OPEB liability on the population of each agency the OCGJ conducted an analysis to determine how much each resident of an agency owed for that agency’s unfunded liability. Table 6 displays the results.

As Table 7 shows, certain cities, such as Westminster, Fountain Valley and Placentia, carry a relatively high per resident liability. Other cities, like Lake Forest and Stanton carry a very low per resident liability. Unfunded liabilities have higher funding priority than other agency obligations and, in the event of a fiscal crisis, funding these unfunded liabilities will require that other agency budget items will have to be slashed.

Table 7: Funds Owed Per Resident for Retiree Healthcare

	City/Agencies	Population	Unfunded Accrued Liability(UAAL)	UAAL per Resident
1	Westminster	89,701	\$62,216,000	\$694
2	Fountain Valley	55,313	\$29,350,000	\$531
3	Placentia	50,533	\$23,732,646	\$470
4	Brea	39,282	\$18,197,000	\$463
5	Anaheim	336,265	\$133,361,000	\$397
6	Costa Mesa	109,960	\$36,429,075	\$331
7	Newport Beach	85,186	\$28,033,000	\$329
8	Yorba Linda	64,234	\$18,725,000	\$292
9	Fullerton	135,161	\$37,800,000	\$280
10	Los Alamitos	11,449	\$2,724,394	\$238
11	Seal Beach	24,168	\$5,164,000	\$214
12	County of Orange	3,010,232	\$411,835,000	\$137
13	Santa Ana	324,528	\$44,238,000	\$136
14	Tustin	75,540	\$9,800,000	\$130
15	La Palma	15,568	\$1,893,010	\$122
16	La Habra	60,239	\$5,879,000	\$98
17	Orange	136,416	\$11,873,809	\$87
18	Buena Park	80,530	\$7,000,000	\$87
19	Garden Grove	170,883	\$10,633,859	\$62
20	Laguna Beach	22,723	\$1,346,828	\$59
21	Huntington Beach	190,963	\$10,600,000	\$56
22	OCFA	3,010,232	127,713,124	\$42
23	Cypress	47,802	\$1,725,000	\$36
24	San Juan Capistrano	34,593	\$1,207,808	\$35
25	Mission Viejo	93,305	\$3,200,000	\$34
26	Irvine	212,375	\$5,407,000	\$25
27	San Clemente	63,522	\$1,432,716	\$23
28	Laguna Niguel	62,979	\$865,981	\$14
29	Laguna Woods	16,192	\$106,225	\$7
30	Rancho Santa Margarita	47,853	\$272,705	\$6
31	Stanton	38,186	\$186,000	\$5
32	Lake Forest	77,264	\$48,897	\$1

Source: Annual Comprehensive Financial Reports for FY 2012-13 obtained from agency websites

GASB 45 Requirement: Compare ARC to the Annual Payroll Cost

The next step in the data analysis was to determine whether the annual costs of retiree health benefits comprised a significant portion of each agency’s annual covered payroll (ACP) costs. A comparison of each agency’s ARC/ACP is depicted in Table 8.

Table 8: Annual Contributions as Percentage of Annual Payroll for FY12-13

	Agencies	Annual Required Contributions (ARC)	Annual Covered Payroll (ACP)	ARC as a % of ACP
1	Placentia	\$2,198,487	\$8,500,000	25.86%
2	Westminster	\$4,878,000	\$20,722,000	23.54%
3	Yorba Linda	\$1,748,362	\$7,619,000	22.95%
4	OCFA	\$14,307,307	\$75,432,000	18.97%
5	Garden Grove	\$925,657	\$6,528,958	14.18%
6	Fountain Valley	\$2,533,000	\$18,041,000	14.04%
7	Stanton	\$177,000	\$1,870,000	9.47%
8	Fullerton	\$3,860,848	\$45,200,000	8.54%
9	Mission Viejo	\$736,000	\$9,900,000	7.43%
10	Seal Beach	\$502,000	\$8,083,000	6.21%
11	Brea	\$1,443,000	\$24,983,000	5.78%
12	Costa Mesa	\$2,146,578	\$38,315,112	5.60%
13	Tustin	\$1,195,094	\$21,520,000	5.55%
14	Los Alamitos	\$243,447	\$4,400,809	5.53%
15	Anaheim	\$8,694,000	\$169,331,000	5.13%
16	Cypress	\$519,000	\$10,749,000	4.83%
17	Santa Ana	\$2,732,000	\$68,382,000	4.00%
18	Newport Beach	\$2,806,000	\$74,971,000	3.74%
19	La Habra	\$615,000	\$16,525,000	3.72%
20	County of Orange	\$42,713,000	\$1,273,636,000	3.35%
21	La Palma	\$159,370	\$4,788,525	3.33%
22	Rancho Santa Margarita	\$45,299	\$1,663,686	2.72%
23	Buena Park	\$563,749	\$21,600,000	2.61%
24	Huntington Beach	\$1,561,000	\$82,400,000	1.89%
25	Laguna Woods	\$14,924	\$790,122	1.89%
26	San Juan Capistrano	\$114,894	\$6,200,557	1.85%
27	Orange	\$989,285	\$55,933,448	1.77%
28	San Clemente	\$139,542	\$13,708,188	1.02%
29	Irvine	\$679,000	\$68,415,000	0.99%
30	Lake Forest	\$50,024	\$5,201,037	0.96%
31	Laguna Beach	\$153,301	\$20,159,361	0.76%
	Sub-Total	\$99,444,168	\$2,185,568,803	4.55%
	Laguna Niguel	\$242,811	No data avail	
	Total	\$99,686,979		

Source: Annual Comprehensive Financial Reports for FY 2012-13 obtained from agency websites: *Data on Laguna Niguel covered payroll not available from CAFR FY 12-13*

Table 8 reveals that some cities had OPEB annual costs that exceeded 20% of the annual payroll, while others, had costs that were less than 1% of their annual payroll. The median is approximately 5% of payroll costs. Agencies that significantly exceed the median have a greater risk of facing financial difficulties in an economic downturn. In the opinion of the OCGJ, it is in the best interest of the cities with high

ARC/ACP values to take steps to reduce their AAL, either by putting away funds (sinking fund) to meet these future expenses, or by renegotiating their future benefit payments with their employees/unions.

GASB 45 Requirement: Timely and Appropriate Recognition of Benefit

According to Generally Accepted Accounting Principles (GAAP), retiree health benefits earned by current employees for their future use should be recognized in the agency's compensation report in the period in which those benefits are earned. Compliance with this reporting requirement is important to both the agency and the public, because it results in a more accurate representation of actual agency compensation costs. The OCGJ analyzed the compensation reports completed by the reviewed agencies to determine whether the agencies that had accrued actuarial liability of their OPEB costs had also disclosed earned retiree health benefits on their compensation reports for current employees. The analysis showed that only one agency, Anaheim, properly discloses retiree health benefits as part of employee compensation.

Other Analysis on OPEB Financial Data

The OCGJ tried to determine why certain agencies had higher OPEB liabilities than others. To determine if high OPEB benefits are a byproduct of contractual agreements between agencies and safety employees, the OCGJ compared the OPEB liabilities of agencies that have the safety employees in-house versus where they are contracted. Safety employees are defined by the California Public Employees Retirement System (CalPERS) as those employees "who are involved in law enforcement, fire suppression, or who are employed in a position designated by law as "Local Safety." Typically these employees include law enforcement officers (e.g., police officers or deputy sheriffs), their supervisors (e.g., police sergeants), and management (e.g. police lieutenants, commanders, captains, and chiefs); or fire protection officers (e.g., firefighters), their supervisors and managers (e.g., fire captains, battalion chiefs, and fire chiefs).

An analysis of the data in Table 9 confirms that generally agencies that outsource their safety functions incur lower costs than agencies that have in-house safety departments. There are a few exceptions, such as the City of Laguna Beach that has both police and fire agencies in-house yet has only \$1.3 million in unfunded OPEB liabilities, and the City of Yorba Linda that has outsourced both safety services and yet has \$18.7 million in OPEB liabilities. However, in general, it appears that outsourcing does bring down OPEB costs for agencies, and that there are budgetary implications in changing from in-house versus outsourcing of safety functions.

Table 9: Unfunded Accrued Actuarial Liability (UAAL) for Safety Services

	City/Agencies	Safety-Police	Safety-Fire	UAAL
1	County of Orange	IN HOUSE	IN HOUSE	\$411,835,000
2	Anaheim	IN HOUSE	IN HOUSE	\$133,361,000
3	Orange County Fire Authority	IN HOUSE	IN HOUSE	\$127,713,094
4	Westminster	IN HOUSE	OUTSOURCE	\$62,216,000
5	Santa Ana	IN HOUSE	OUTSOURCE	\$44,238,000
6	Fullerton	IN HOUSE	IN HOUSE	\$37,800,000
7	Costa Mesa	IN HOUSE	IN HOUSE	\$36,429,075
8	Fountain Valley	IN HOUSE	IN HOUSE	\$29,350,000
9	Newport Beach	IN HOUSE	IN HOUSE	\$28,033,000
10	Placentia	IN HOUSE	OUTSOURCE	\$23,732,646
11	Yorba Linda	OUTSOURCE	OUTSOURCE	\$18,725,000
12	Brea	IN HOUSE	IN HOUSE	\$18,197,000
13	Orange	IN HOUSE	IN HOUSE	\$11,873,809
14	Garden Grove	IN HOUSE	IN HOUSE	\$10,633,859
15	Huntington Beach	IN HOUSE	IN HOUSE	\$10,600,000
16	Tustin	IN HOUSE	OUTSOURCE	\$9,800,000
17	Buena Park	IN HOUSE	OUTSOURCE	\$7,000,000
18	La Habra	IN HOUSE	OUTSOURCE	\$5,879,000
19	Irvine	IN HOUSE	OUTSOURCE	\$5,407,000
20	Seal Beach	IN HOUSE	OUTSOURCE	\$5,164,000
21	Mission Viejo	OUTSOURCE	OUTSOURCE	\$3,200,000
22	Los Alamitos	IN HOUSE	OUTSOURCE	\$2,724,394
23	La Palma	IN HOUSE	OUTSOURCE	\$1,893,010
24	Cypress	IN HOUSE	OUTSOURCE	\$1,725,000
25	San Clemente	OUTSOURCE	OUTSOURCE	\$1,432,716
26	Laguna Beach	IN HOUSE	IN HOUSE	\$1,346,828
27	San Juan Capistrano	OUTSOURCE	OUTSOURCE	\$1,207,808
28	Laguna Woods	OUTSOURCE	OUTSOURCE	\$865,981
29	Rancho Santa Margarita	OUTSOURCE	OUTSOURCE	\$272,705
30	Stanton	OUTSOURCE	OUTSOURCE	\$186,000
31	Laguna Niguel	OUTSOURCE	OUTSOURCE	\$106,225
32	Lake Forest	OUTSOURCE	OUTSOURCE	\$48,897
	Total UAAL			\$1,052,997,047

Source: Annual Comprehensive Financial Reports for FY 2012-13 obtained from agency websites

FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled “Unfunded Retiree Health Care Obligations-A Problem for Public Agencies?,” Orange County, the 2014-2015 Orange County Grand Jury has arrived at five principal findings, as follows:

- F.1.** Aliso Viejo, Dana Point, Laguna Hills, and Villa Park were not in compliance with GASB Statement No. 45 regarding the authorization of a study to determine other post-employment benefit liabilities. Aliso Viejo, Dana Point, Laguna Hills, Laguna Woods, and Villa Park were not in compliance with the disclosure of post-employment benefits in the Notes Section of their Comprehensive Annual Financial Report for the FY2012-13
- F.2.** Twenty one out of the 32 agencies that provided June 30, 2013, data to the Grand Jury had not put aside funds in an irrevocable trust to help pay for the accrued actuarial liability of retiree healthcare costs in the future. This is an imprudent level of contribution.
- F.3.** Anaheim, Buena Park, County of Orange, Huntington Beach, Lake Forest, and Stanton were in compliance with the requirement to contribute a full 100% or more of their Annual Required Contribution in the FY 2012-13. The remaining 26 agencies were not in compliance.
- F.4.** All agencies surveyed (except Anaheim) do not disclose retiree health benefits as part of employee compensation per GAAP standards.

RECOMMENDATIONS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled “Unfunded Retiree Health Care Obligations-A Problem for Public Agencies?,” the 2014-2015 Orange County Grand Jury makes the following four recommendations:

- R.1.** The cities of Aliso Viejo, Dana Point, Laguna Hills, Villa Park, and Laguna Woods should measure and disclose their liability in accordance with Governmental Accounting Standards Board Statement No. 45. (F.1.)
- R.2.** The 21 agencies that have not contributed into an irrevocable trust fund to finance their retiree health obligations should begin to put aside monies to fund this obligation and reduce their unfunded public liabilities (F.2.)

- R.3.** The 26 agencies that are not recognizing the full amount of their Annual Required Contribution as expense in the current period and should comply with the requirement to do so. (F.3.)
- R.4.** All agencies surveyed should recognize retiree health care benefits in employee compensation in conformity with GAAP. (F.4.)

REQUIRED RESPONSES

The California Penal Code section 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected official shall comment on the findings and recommendations pertaining to the matters under that elected official's control within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code section 933.05, subdivisions (a), (b), and (c), provides as follows, the manner in which such comment(s) are to be made:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section 933.05 are required from Orange County, the Orange County Fire Authority, and the Mayors of the cities as denoted in the following Response Matrix:

RESPONSE MATRIX									
		Findings				Recommendations			
		F1	F2	F3	F4	R1	R2	R3	R4
1	Aliso Viejo	x				x			
2	Anaheim								
3	Brea		x	x	x		x	x	x
4	Buena Park				x				x
5	Costa Mesa		x	x	x		x	x	x
6	County of Orange (BOS)				x				x
7	Cypress		x	x	x		x	x	x
8	Dana Point	x				x			
9	Fountain Valley			x	x			x	x
10	Fullerton		x	x	x		x	x	x
11	Garden Grove		x	x	x		x	x	x
12	Huntington Beach				x				x
13	Irvine		x	x	x		x	x	x
14	La Habra		x	x	x		x	x	x
15	La Palma		x	x	x		x	x	x
16	Laguna Beach		x	x	x		x	x	x
17	Laguna Hills	x				x			
18	Laguna Niguel		x	x	x		x	x	x
19	Laguna Woods	x	x	x	x	x	x	x	x

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RESPONSE MATRIX									
	Findings					Recommendations			
	F1	F2	F3	F4		R1	R2	R3	R4
20 Lake Forest				X					X
21 Los Alamitos		X	X	X			X	X	X
22 Mission Viejo			X	X				X	X
23 Newport Beach			X	X				X	X
24 Orange		X	X	X			X	X	X
25 Orange County Fire Authority			X	X				X	X
26 Placentia		X	X	X			X	X	X
27 Rancho Santa Margarita		X	X	X			X	X	X
28 San Clemente		X	X	X			X	X	X
29 San Juan Capistrano		X	X	X			X	X	X
30 Santa Ana		X	X	X			X	X	X
31 Seal Beach			X	X				X	X
32 Stanton				X					X
33 Tustin		X	X	X			X	X	X
34 Villa Park	X					X			
35 Westminster		X	X	X			X	X	X
36 Yorba Linda		X	X	X			X	X	X

REFERENCES

California Debt and Investment Advisory Commission. OPEBs & GASB 45, A Question and Answer Guide CDIAAC # 06-09(2009)

Comprehensive Annual Financial Reports for FY 2012-13, as retrieved from the following city/agency web sites:

Aliso Viejo
Anaheim
Brea
Buena Park
Costa Mesa
Cypress
Dana Point
Fountain Valley
Fullerton
Garden Grove
Huntington Beach
Irvine
Laguna Beach
Laguna Hills
Laguna Niguel
Laguna Woods
La Habra
Lake Forest
La Palma
Los Alamitos
Mission Viejo
Newport Beach
Orange
Placentia
Rancho Santa Margarita
San Clemente
San Juan Capistrano
Santa Ana
Seal Beach
Stanton
Tustin
Villa Park
Westminster
Yorba Linda
County of Orange
Orange County Fire Authority

Governmental Accounting Standards Board GASB (2004). Summary of Statement No.45, as retrieved from :

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<https://www.calpers.ca.gov/index.jsp?bc=/about/newsroom/news/new-report-fund-finances.xml>

Torres, Zahira (2015, March 7). Health benefits are a promise school districts find hard to keep. Los Angeles Times.

APPENDIX: GLOSSARY OF TERMS

Governmental Accounting Standards Board (GASB): GASB is the source of generally accepted accounting principles (GAAP) used by state and local governments in the United States. As with most of the entities involved in creating GAAP in the United States, it is a private, non-governmental organization.

The GASB is subject to oversight by the Financial Accounting Foundation (FAF), which selects the members of the GASB and the Financial Accounting Standards Board and funds both organizations.

The mission of the GASB is to establish and improve standards of state and local governmental accounting and financial reporting that will result in useful information for users of financial reports and guide and educate the public, including issuers, auditors, and users of those financial reports.

The GASB has issued Statements, Interpretations, Technical Bulletins, and Concept Statements, defining GAAP for state and local governments since 1984. GAAP for the Federal government is defined by the Federal Accounting Standards Advisory Board.

Other Post-Employment Benefits (OPEB): are part of total compensation offered by employers to attract and retain employees. OPEB includes postemployment health care, as well as other postemployment benefits e.g. life insurance when provided separately from a Pension Plan.

The applicable GASB statements are:

- Statement No. 25, *Financial Reporting for Defined Benefit Pension Plans and Note Disclosures for Defined Contribution Plans*
- Statement No. 26, *Financial Reporting for Post-employment Healthcare Plans Administered by Defined Benefit Pension Plans*
- Statement No. 43, *Financial Reporting for Post-employment Benefit Plans, Other Than Pension Plans*
- Statement No. 45, *Accounting and Financial Reporting by Employers for Post-employment Benefits, Other Than Pensions*

GASB pronouncements apply to governmental entities, public benefit entities, public employee retirement systems, and public utilities, hospitals and other healthcare providers, and colleges and universities.

Unfunded Accrued Actuarial Liability (UAAL) is the amount of retirement benefits that are owed to employees in future years that exceed current assets and their projected growth.

Annual Required Contribution (ARC) is the employer's required contributions for the year, calculated in accordance with certain parameters and includes (a) the normal cost

for the year and (b) a component for amortization of total unfunded actuarial accrued liabilities(or funding excess) of the plan over a period not to exceed thirty years.

AB109 OFFENDERS: ARE CURRENT PROBATION STRATEGIES EFFECTIVE?



GRAND JURY 2014-2015

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EXECUTIVE SUMMARY

AB109 placed local offenders who were formerly in state prison under the supervision of the Orange County Probation Department (OCPD). A review of several studies found that while AB109 offenders do not appear to pose an increased danger to the community, they nonetheless pose a high risk of re-offending, especially as it relates to property crime. This 2014-2015 Grand Jury investigation examined the effectiveness of the strategies utilized by the OCPD in the supervision of AB109 offenders to reduce recidivism and maintain public safety.

The Grand Jury concluded that the OCPD could take specific actions to improve the supervision and treatment of AB109 offenders. At intake, each offender receives a risk assessment. The score for AB109 offenders is substantially higher than it is for the traditional OCPD probationer. The investigation found that risk assessment scores are not associated with specific supervision guidelines, AB109 offenders require more intense supervision, and some caseloads for AB109 high-risk offenders are not set at manageable numbers.

Regarding treatment and supervision, the Grand Jury found several issues concerning current drug treatment and testing policies that are inadequate. A shortage of residential drug treatment beds limits options for the probation department and offenders. A review of the OCPD's drug testing programs for AB109 offenders reveals that there is a need to enhance the integrity of drug testing.

BACKGROUND

Effective October 1, 2011, the Public Safety Realignment Act (California Assembly Bill 109, known as AB109) redirected prison inmates whose last conviction was for offenses considered non-serious, non-violent, and non-sexual (referred to as "non-non-non") from state prison to local county jails. This legislation implemented one of the most dramatic changes in California criminal justice history. California had for years been under federal court oversight to significantly reduce their prison population, while simultaneously shifting correctional philosophies from the punitive practices of the past 30 years to a more rehabilitative, evidence-based model. The goal of AB109 realignment was to encourage local government, specifically counties, to develop evidence-based practices as a way to reduce crime and victimization. The supposition of AB109 is that offenders are more likely to respond to rehabilitation programs provided in their own communities, which in turn, will enhance successful re-integration.

Previously, any crime punishable by more than one year was a felony, which required that the sentence be served in state prison. The courts are now able to sentence convicted offenders for non-non-non crimes to serve their time in county jail, even if the sentence was over one year. Offenders whose last conviction was for serious, violent, and/or sex crimes are required to serve their felony sentences in state prison. State parole agents will continue to supervise serious and violent offenders when they are released on parole from state prison.

Under AB109, the OCPD became responsible for supervising two additional categories of offenders: (1) post-release community supervision (PRCS, also known as

PCS by OCPD), and (2) mandatory supervision (MS). PRCS places prisoners released from state prisons under the direct supervision of county probation officers for up to three years. Under MS, the court would generally have sentenced these offenders to state prison, but instead they complete a period of incarceration in the county jail followed by a period of community supervision (Realignment Report, 2013).

Each of the 58 counties in California has designated its local probation department as the agency responsible for PRCS and MS cases. With the two new categories of supervision, the Deputy Probation Officer (DPO) can administer a range of sanctions: simple reprimand, additional special conditions, increasing reporting requirements, or “flash” incarceration. Flash incarceration is a new sanction that gives the DPOs the authority to arrest an offender and impose a short period of custody not to exceed 10 days (known as “flash” incarceration). The sanction of flash incarceration does not require court approval, and the probation department may impose it multiple times (Realignment Report, 2013).

It should be noted that to be eligible for AB109, an offender’s current, or most recent felony conviction must have been for a non-violent, non-serious, and non-sexual offense. Thus, a prior conviction for a violent, serious, or sexual offense does not disqualify a person for AB109 participation. The OCPD established specialized supervisory units for AB109 offenders in these categories: domestic violence, gangs, white supremacists, Mexican Mafia, and sex offenders.

REASON FOR THE STUDY

AB109 significantly altered the type of offender supervised by the OCPD. The release of state prison inmates to local supervision by county probation officers has raised concerns about greater risk to the community as well as the safety of probation officers who historically have not supervised state prison offenders. The scope of the study is limited to AB109 offenders within specialized units of the OCPD.

There are two aspects to the work of the probation department with AB109 offenders: supervision to protect the community from additional criminal activity, and rehabilitation to minimize recidivism. The Grand Jury wanted to know how the AB109 changes affected the OCPD in the strategies utilized to supervise these more sophisticated, “streetwise” state prison inmates. Although briefly introduced, this report does not include the more recent impact of Proposition 47 on AB109 offenders or the Orange County community.

METHODOLOGY

The Grand Jury pursued several methods of investigation in order to understand the various aspects of the impact of AB109 on the OCPD, the AB109 offenders themselves, and the community at large. The Grand Jury reviewed a significant amount of literature on the subject as well as several research papers and governmental reports.

The Grand Jury examined a random set of AB109 offender’s case files and the OCPD policies and procedures. Interviews were conducted with management and staff

of the OCPD AB109 units and several staff members from the Orange County Health Care Agency.

INVESTIGATION AND ANALYSIS

The Grand Jury examined OCPD policies and procedures dealing with specific supervision strategies utilized with AB109 offenders. These included surveillance as well as rehabilitative services. This discussion will include risk assessment instruments, classification systems, caseload sizes, field and office contacts, as well as drug testing methods.

A New Approach to Probation Supervision

The California legislature, with a great deal of specificity, redirected correctional philosophy, and thus policy, from one that emphasizes punishment and control to one that places a much greater emphasis on community-based alternatives to incarceration, such as residential programs and rehabilitation. The changes in policy are contained in California Penal Code section 3450 (See Appendix 1). In its mission statement, the OCPD supports the main concepts found in Penal Code section 3450 (See Appendix 2).

OCPD's AB109 Supervision Strategies

The OCPD's 2013 Update highlights a number of supervision methods, especially as it relates to rehabilitation. AB109 supervision strategies include:

- Incentives for favorable adjustment to supervision partnerships with local law-enforcement include the stationing of approximately 17 DPOs at various police departments and the OC Sheriff's Department.
- A "regional" approach wherein each city in OC has at least one liaison officer assigned to supervise AB109 cases in that city.
- Flash incarceration, which gives the DPO the discretion to incarcerate a non-compliant offender for up to 10 days without judicial order.
- Re-entry team: In this approach, a DPO and a healthcare caseworker identify individual issues and needs, and make appropriate referrals.
- AB 109 offenders may be eligible for the CORE (Center for Opportunity Re-entry and Education).
- Adult Day Reporting Center (DRC): The DRC was funded with AB109 monies, and its participants must be either PRCS or MS offenders. A significant number of services include:
 1. Life Skills and Cognitive Behavioral Therapy
 2. Substance Abuse Counseling
 3. Anger Management Counseling
 4. Parenting and Family Skills Training
 5. Job Readiness and Employment Assistance
 6. Education Services
 7. Community Connections
 8. Restorative Justice Honors Group
 9. Reintegration and Aftercare

If the offender is required to participate in the DRC, failure to comply may result in an additional community sanction, such as an increase in supervision that may include additional classes, increased reporting, increased treatment, or possible "flash" incarceration (Orange County, 2013).

General Needs for Probationers (Employment, Housing, Education, etc.)

One officer interviewed indicated that while there are many resources available for AB109 offenders, these resources tend to be located around central Santa Ana. Many offenders throughout the county do not have access to such resources due to distance and/or transportation problems. The officer suggested that resources distributed more evenly across the county are needed. An example cited was the Adult Day Reporting Center located on Civic Center and Flower Streets. The officer believed that although the Day Reporting Center provided many good services, including monthly bus passes, some AB109 offenders simply cannot access the services due to travel times and distance to downtown Santa Ana.

Several officers indicated there is a definite need for more housing for homeless offenders and for those who have unstable living arrangements upon release from custody. One officer felt that there was a significant need for additional sober-living facilities and a need for more beds for homeless sex offenders. The Grand Jury learned there are currently only two facilities to house sex offenders, having an approximate capacity of 20 beds each. The high need for employment resources and job placement was a constant theme among field officers.

Drug Rehabilitation Needs for Probationers

Eighty-eight percent of AB109 offenders are drug abusers (Orange County, 2013). The probation officer refers the AB109 offender to the HCA assessment social worker (SW) assigned to three probation offices, who then assess the AB109 offender. The SW attempts to evaluate the offender for the best program fit, be it for drug treatment, mental health, housing, employment training, or any number of other services. When released from jail or prison, an AB109 offender may need detoxification prior to placement in a residential drug treatment program. Placement in residential drug treatment is limited to 90 days in most cases, although on rare occasions an extension may be granted. If the offender completes a residential drug treatment program, continued outpatient drug counseling or a transition to a sober-living program usually follows.

A concern by several officers was the new policy instituted by the HCA limiting residential drug treatment to one time per year. If an offender leaves treatment, is discharged, or relapses after successful completion, he or she may not return for further residential treatment for one year unless ordered by the court. Several officers reported that if substance abusers are not ready to enter treatment, failure is likely to occur. Four examples from the cases reviewed are summarized in Appendix 3 to provide a clear view of the challenges faced in supervising AB109 offenders.

HCA staff reported that there are approximately 108 residential drug treatment beds. However, due to a high level of residential funding expenditures early in the fiscal

year, effective October 2014, residential referrals for AB109 offenders have been limited to 25 per month. The Grand Jury learned that four residential contract programs were equipped to accept dual diagnosis cases (drug and mental health histories). Unfavorable discharge of the offender results from substance use, verbal aggression, violence, or being defiant.

Consistently, throughout the HCA interviews, the issue of motivation came up. HCA staff indicated that motivation to seek residential drug treatment was a necessary factor in referring the offender. That is, if the offender did not exhibit sufficient motivation, he or she would likely not be referred. This was based on their belief that motivation was a necessary factor to demonstrate in order to be open to treatment.

Furthermore, HCA staff indicated that there were too many offenders with a high level of motivation seeking treatment to allow an unmotivated person to take up a highly valued treatment bed. Prior to the funding limitation, residential drug treatment was available to AB109 offenders practically "on demand." Information obtained from the HCA revealed that the cost for residential drug treatment is \$72 per day. This contrasts with \$30 for outpatient group counseling, \$60 for individual outpatient counseling, and \$70 for individual counseling for a mentally ill outpatient offender. Sober-living cost per day is \$38.

Therefore, residential drug treatment is the most intensive and most costly form of treatment for substance abusing offenders. Many, if not most, AB109 offenders, given the severity of their social, behavioral, cognitive, and psychological problems, would benefit from this more intensive form of treatment. Outpatient drug treatment alone is generally inadequate in addressing the severity of the problems experienced.

If an offender leaves treatment, is discharged unfavorably, or relapses, it is unlikely he or she would be readmitted for the remainder of the fiscal year. Instead, he or she may be referred to a county bed or the Salvation Army treatment program, but both have long waiting lists. Other treatment modalities available to substance abusers include methadone detox and maintenance, as well as Vivitrol, an opiate antagonist.

In most cases, substance abusers are given a "one shot" attempt at residential drug treatment. If they are terminated, walk out, and otherwise do not complete the program, they are not re-admitted into the four AB109 contract facilities for the remainder of the fiscal year. The research however, is quite clear that the process of treatment involves failure and relapse, ultimately leading to success.

Drug Testing and Supervision Procedures for Probation Officers

A large volume of research literature demonstrates that among criminally-oriented persons, illegal drug use intensifies criminal activity. According to a number of researchers, offenders who are criminally-oriented tend to commit more crimes and commit more serious crimes after they become drug dependent (McBride, 1981; McBride and McCoy, 1993; Speckart & Anglin, 1986). Among the criminally-oriented, drug use exacerbates other types of criminal activities, such as property crimes (burglary, car thefts, petty thefts, etc.) to support a drug habit.

The OC Public Safety Realignment 2013 Update Report indicates that a majority of offenders released from custody has substance abuse and/or mental health problems, and many of them commit crimes related to their disorder. The purpose of providing treatment services to offenders released under AB109 Realignment is to reduce recidivism and costly re-incarceration (Orange County, 2013). The empirical research on substance-abusing offenders also supports drug treatment as an effective means to reduce illegal drug use, crime, and recidivism among the offender population.

As noted, a major risk factor among almost all AB109 offenders is substance abuse: 90% of MS cases have a substance abuse history, and 86% of PRCS cases have a drug history. Combining these two categories, fully 88% of realignment cases have a drug abuse history. The two major factors in the risk-assessment instrument that are most correlated with the risk of new criminal conduct are: (1) prior probation violations, and (2) drug use problems within the past 12 months (Orange County, 2013).

In light of the high correlation between substance abuse and crime, it is critical that probation departments utilize *credible strategies* to detect drug use in AB109 offenders as early as possible to intervene before severe use increases the likelihood of criminal activity. Early intervention serves the public-safety interest of the community and potentially keeps the offender from the consequences of a new conviction. Community safety and early intervention thus require that policies and procedures be in place to facilitate early detection of drug use.

Lurigio, (1999), a noted researcher in substance abuse, presents several principles of effective treatment for drug-using offenders, which can serve as a guide (see Appendix 4 for details). These principles provided a framework and standard to review the OCPD drug-testing program. Among these principles is the establishment of drug-testing schedules based on the probationer's classification level and of sanctions for failing to show up at the scheduled time, or for attempting to subvert the testing process. Specific policies and procedures regarding classification levels for drug testing, failures to show up for testing, and diluted urine specimens were not contained in the OCPD policy and procedures manual.

The OCPD's Procedures Manual, Item 2-1-007, dated February 2, 2011 defines urinalysis and provides for the procedure in obtaining a urine sample. The policy, however, does not outline a system of testing frequency. Like supervision levels, the initial period on supervision is a time of higher risk, requiring close and more frequent monitoring generally, and drug testing specifically.

In addition, the method of obtaining a random drug test is not presented in the policy item. Among the most common methods to avoid a positive drug test are: (1) simply failing to report for a test, or attempting to defer a test until a later date when detectable levels of the drug are lower, and (2) drinking large quantities of liquids, known as "flushing," to reduce the concentration level below detectable standards.

The policy item does not address the "no show" manipulation of avoiding a drug test.

The policy item addresses "diluted" samples in the following manner:

1. A diluted sample *is not* considered a positive test if the official results are negative.
2. A diluted sample *is not* a tampered specimen nor is it proof an adulterant has been used.
3. A diluted sample with positive results from the lab *is* considered a positive test.
4. In extreme cases, a probationer who submits a series of diluted tests may be considered in violation for failure to submit to testing as directed (Urinalysis, 2011).

While a diluted sample cannot be considered a positive test unless the sample is returned positive, it is a potential indication of attempts to manipulate the testing procedure and should not be considered a "valid" sample. Technology exists to test the dilution (specific gravity) level of a collected sample by use of a refractometer and other devices.

During interviews, deputies often reported that they exercised a great deal of discretion in determining drug testing schedules and what action to take for positive tests and for failing to report for a test. A great deal of disparity existed among officers regarding the decision to impose a sanction as well as the nature of the sanction utilized. Many officers also reported that there were no set guidelines for monthly contacts based on classification level, explaining that each case was unique, different approaches to supervision were applied, and all visits were random.

No classification system for frequency of drug testing could be determined or located, and the frequency of drug testing was at the complete discretion of the supervising DPO. No specific policy was contained in the Policy and Procedures Manual on "no shows" for testing, and the stated policy for diluted specimens appears to encourage the manipulation of drug testing via flushing.

After reviewing the random sampling of case histories (see Appendix 3), the Grand Jury has concluded that given the significant drug histories of these offenders, the frequency of urine drug tests is inadequate for proper surveillance of the high-risk AB109 offenders.

There is a general belief among treatment providers, correctional workers, and the general public that a substance-abuser, especially an offender, will not benefit from treatment unless he/she is motivated to "get clean." About 50% of referrals to community-based treatment programs come from criminal justice system agencies (Price & D'Aunno, 1992). Research conducted by Anglin, Brecht, and Maddahian (1990) found that offenders coerced into drug treatment by legal mandates were just as successful in recovery as those who entered treatment programs voluntarily. Legally coerced participants often remained longer in drug treatment programs.

Much research on drug treatment, especially residential, finds that the longer one stays in treatment, the greater the chance of success. However, a study by Klag, O'Callaghan and Creed (Klag, 2004) found that in three decades of research into effectiveness of compulsory treatment, the results have been mixed and inconclusive. The vast majority of OCPD interviews indicated a strong belief in the positive benefits of

residential drug treatment. The Grand Jury concluded that residential drug treatment is more effective than outpatient treatment or incarceration.

On November 4, 2014, California voters passed Proposition 47, which reduced penalties for drug possession and other non-violent crimes. According to experts, the greatest effect will be in drug possession cases, which have been downgraded from felonies to misdemeanors. Other felonies that will also be downgraded include some forgeries, thefts, and shoplifting.

Prosecutors are accustomed to threatening drug offenders with felony convictions to coerce them into drug treatment programs. They will no longer have this option to use as leverage, due to the lenient sentences that accompany misdemeanor cases. A major question seems to be how the criminal justice system will persuade substance abusers to enter treatment when the consequences of a felony conviction are now removed. Without the threat of jail, there is little incentive to participate in drug treatment (Paige, 2014). The consequences to the community and for AB109 offenders and their willingness to participate in substance abuse treatment are uncertain at this time. Proposition 47 further complicates the ability to predict the impact of crime rates in Orange County

Risk Assessment, Classification, and Supervision Procedures

The Grand Jury requested copies of the procedures manual that addressed classification levels and the minimum supervision guidelines for each level (e.g., frequency of home visits, office contacts, work verification, collateral contacts, record checks, and frequency of drug testing). Such guidelines and standards do not appear to be included in the OCPD Policies and Procedures Manual. Furthermore, the vast majority of DPOs interviewed stated that supervision standards and guidelines did not exist and that the number of supervision contacts per month is at the discretion of the supervising officer.

The OCPD did provide the Grand Jury with a document labeled "Adult Model Instructional Booklet," (Orange County, n.d.), that states in part, "This booklet has been written as a desk reference to answer questions you may have about the completion of Adult Risk/Needs Assessment and Reassessment Packets." Sub-section 2 of this document states that "High supervision" classification cases will be contacted in person twice each month, or once per month if in custody. At no time during the review did any officer refer to this document or booklet when specifically asked about supervision standards, nor were such standards included in the Policies and Procedures Manual sections presented to the Grand Jury.

Since the mid-1980s, the OCPD has utilized a validated risk-needs assessment instrument as the foundation for implementing evidence-based practices to reduce recidivism. The risk assessment instrument is designed to differentiate the probability of offenders committing new law violations after placement on supervision. Based on risk of reoffending, supervision resources are allocated to provide the most intense supervision to high-risk offenders.

Upon revalidation of this instrument in 2011, a low risk score was adjusted to a range of 0-8, medium risk to a range from 9-20, and high risk to a range of 21+ (Orange County, 2011). As of September 2013, 91% of PRCS cases scored 26.9, and 90% of

MS cases had a score of 26 (Orange County, 2013). Hence, the majority of AB109 offenders are determined to be high risk.

Major risk factors among almost all AB109 offenders include a serious substance-abuse history. Ninety percent (90%) of MS and 86% of PRCS cases have a drug history. The two major factors that are most correlated with the risk of new criminal conduct in the risk assessment instrument are (1) prior probation violations, and (2) drug use problems within the past 12 months (Orange County, 2013).

The OCPD case files examined by the Grand Jury (see Appendix 3) reinforce the information contained in the Realignment Update Report of 2013, which is that AB109 offenders have significant prior records, 90% have a substance abuse history, most have two or more prior violations, and many have prior convictions for serious crimes. The cases reviewed demonstrate that indeed these are high-risk cases that (1) are labor intensive, (2) present multiple problems, (3) have serious substance- abuse issues, (4) have multiple violations, and (5) require supervision consistent with their high-risk classification level. In fact, given the risk scores substantially above the base 21 score for "high risk," a strong argument can be made that these cases justify "intensive supervision."

The American Correctional Association (ACA), in establishing standards for a Supervision/Service Plan states that an individualized supervision plan is developed for each offender, and that the plan should be reviewed and approved by a supervisor. In establishing standards for the supervision plan, the ACA reports that the appropriate level of supervision is determined by the offender's risk and needs (Performance-Based Standards, 2010, pp17). The Chief Probation Officer's Association also emphasizes that it is good public policy to use validated assessment tools to assign offenders to the correct level of probation monitoring and to match them with evidence-based programs that address the specific criminal risk factors of the individual (Assessing, 2013).

Probation and parole agencies routinely include supervision standards and guidelines in their policies and procedures manuals, establishing minimum monthly contacts based on risk assessment scores. For example, the District of Columbia Court Services and Offender Supervision Agency includes the following minimum monthly contacts based on supervision classification. (Table 1)

Table 1: Minimum Monthly Contacts by Classification

Supervision Level	Minimum Number of Face-to-Face Contacts	Frequency of Field Contacts*
Intensive	8 times per month	4 per month
Maximum	4 times per month	2 per month
Medium	2 times per month	1 per month
Minimum	1 time per month	1 per every 2 months

*Frequency of Field Contacts
 Important Note: at least 50% of the minimum number of face-to-face contacts for each classification level must take place in the field (i.e., outside of the office setting). In this context, face-to-face contacts are broadly construed to include purposeful contact between the offender and CSO/SCSO that is scheduled or unscheduled or between the offender and a CSO and other Agency staff and law enforcement partners not directly charged with the offender's supervision.

(District, 2011)

The Probation Case Classification and Workload Measures System for Indiana similarly established minimum contact standards for adult supervision as shown below. (Table 2)

Table 2: Indiana Contact Standards

ADULT SUPERVISION

FUNCTION	HIGH LEVEL	MEDIUM LEVEL	LOW LEVEL	ADMIN LEVEL
1. No. of FACE-TO-FACE DEFENDANT contacts per month	2	1	1 every 60 days	0
2. No. of residency visits or verifications	1 visit every 90 days	1 verification every 120 days	0	0
3. No. of field FACE-TO-FACE collateral contacts per month	1 every 60 days	0	0	0
4. No. of NON-FACE-TO-FACE contacts WITH DEFENDANT per month	1	0	1	1
5. Other NON-FACE-TO-FACE contacts/month (e.g. contacts with treatment service, etc.)	1	1 every 60 days	0	0

(Indiana, 1995)

A final example of contact standards is included from the New York Division of Criminal Justice Services, Office of Probation and Correctional Alternatives Citation (New York, 2012) as summarized in three areas below:

(1) For the Greatest Risk population, the probation department shall conduct a minimum of six probationer contacts, six collateral contacts, and one positive home contact per month.

The probationer contacts shall include one in-person contact per week and two probationer contacts per month. One positive home contact is required each month from case assignment. A positive home contact constitutes one of the required in-person contacts.

After the stabilization period of 3 months for juveniles and 3-6 months for adults has been completed, and if the probationer has complied with the conditions of probation and the case plan, he/she may be considered for Merit Credit. Up to one probationer contact per month may be credited.

(2) For the High Risk population, the probation department shall conduct a minimum of one in-person contact per week, six collateral contacts per quarter, and one home contact per month. One positive home contact is required during the first month from case assignment. Thereafter, three home contacts are required each quarter, one completed each month during the quarter, two of which must be positive home contacts. A positive home contact constitutes a required in-person contact.

After the stabilization period of 3 months for juveniles and 3-6 months for adults has been completed, and if the probationer has complied with the conditions of probation and the case plan, he/she may be considered for merit credit. Up to one in-person contact per month may be credited.

(3) For the Medium Risk population, the probation department shall conduct a minimum of two probationer contacts per month and two collateral contacts per quarter. The probationer contacts shall include one in-person contact per month. One positive home contact is required during the first forty-five (45) calendar days from case assignment and as needed thereafter. A positive home contact constitutes one of the required in-person contacts.

Without supervision standards and guidelines, each OCPD DPO is left to his or her own discretion in deciding how much supervision to provide to each offender. Risk/classification level becomes meaningless, and inconsistency prevails. AB109 offenders are at high risk for new criminal conduct and require a high degree of surveillance and services for the safety of the community. A small random sample of AB109 files were reviewed for this study. The review found there to be supervision contacts, home contacts, and collateral contacts inconsistent with the high-risk classification of AB109 offenders and accepted standards.

The Grand Jury concluded that the OCPD Policy and Procedures Manual does not provide adequate procedural guidelines to address the risk assessment process, the classification process, and the supervision plan criteria to provide consistent requirements for the DPOs. These procedures are not consistent with guidelines used by professional organizations such as the American Correctional Association and the American Probation and Parole Association.

AB109 Caseload Size for Probation Officers

Determining the right caseload size is complex and dependent on the diversity of size, structure, geographical area, organization, and clientele that characterizes probation and parole. According to the American Probation and Parole Association (APPA), there are key differences that produce significant variations. Not all offenders are alike, not all court orders are identical (or equal), and not all jurisdictions are the same. Thus, it is difficult to prescribe the ideal caseload size.

The importance of caseload size to the effectiveness of probation and parole supervision cannot be overstated. Prior experiments with small, intensive-supervision (ISP) caseloads were a dismal failure because ISP officers tended to be aggressive in their surveillance and punitive in their sanctioning. With a small number of exceptions, the ISP caseloads did not provide services or treatment. Thus, the promise of that smaller caseload approach was erased by a "get tough" approach that was not based on empirical research (Caseload, 2006).

A number of ISPs implemented a more balanced, evidence-based approach to supervision, which included an emphasis on working with offenders on the causes of their criminal behavior through counseling, services, and treatment. These ISPs have shown positive results in terms of reducing criminal activity and technical violations. These programs demonstrate that small caseloads combined with effective strategies can produce improved results.

The APPA concluded that the results are now clear: caseload size is important in probation and parole, noting that manageable caseloads, especially with high-risk, intensive supervision cases, are necessary for effective supervision, but they are not sufficient. Officers must provide supervision using the principles of evidence-based practice. Only with this potent combination can the potential of probation and parole be achieved (Caseload, 2006).

For the 35 AB109 field officers in Orange County, caseload sizes range from 20 to 83, with an average caseload of 55 cases. When one excludes an officer with a specialized caseload of transfer cases at 20, an arrest warrant caseload of 468, and a field management-administrative caseload, one is left with 32 officers with cases ranging from 30 to 83. This equates to an average of 60 cases per officer, although, as observed there is a significant variation in the number of cases each officer carries. Four officers have caseloads in the 30s, five are in the 40s, 12 are in the 50s, seven are in the 60s, two officers have 71 and 74 cases respectively, and one officer supervises 83 cases (Management Staff, Personal Communication, November 3, 2014).

Thus, excluding the three caseloads with a specialized AB109 unit, the average caseload is slightly over 60 cases. The APPA has set caseload standards for probation and parole supervision by classifying cases into several broad categories, based on key criteria such as are determined with a risk-needs assessment instrument. The APPA has developed caseload standards that are summarized in Table 3.

Table 3: APPA Caseload Standards

Classification Type	Cases to Staff Ratio
Intensive	20:1
Moderate to High Risk	50:1
Low Risk	200:1
Administrative	No limit

(Caseload, 2006)

While the frequency of contacts was generally considered inadequate for the high-risk classification level, AB109 cases generate a significant level of activity, and the high caseload size for these high-risk, intensive offenders impedes the greater frequency of contacts. AB109 officers devote a great deal of time to providing services, addressing technical violations, and conducting assessments and reassessments that are required. Despite these pressing responsibilities, the Grand Jury concluded that many of the AB109 caseloads were sufficiently manageable to have contacts more in line with the high-risk classification level.

There is a wide variation in caseload size. While some officers' caseloads were in the 20s, 30s, and 40s—desirable caseload sizes for these high-risk AB109 offenders—12 officers were in the 50s, 10 had caseloads in the 60s and 70s, and one officer supervised 83 cases. Considering the caseload standards of the APPA, the current caseload size for 23 of the officers may be considered manageable. However, the 10 remaining officers are supervising more than the APPA recommended for optimal service and community safety.

Conclusion

Historically, probation departments have two major roles: social work or the rehabilitation role, and the law enforcement role, assuring compliance with the conditions of probation, and holding the probationer accountable—all aimed at the ultimate goal of community protection. While most agencies tend to gravitate toward one end of the social work-law enforcement continuum (rehabilitation v. enforcement), ideally, departments will possess a proper balance, providing both treatment services, while assuring compliance with the conditions of probation.

The Grand Jury observed that the OCPD provides considerable drug treatment opportunities to its AB109 offenders. Treatment services can always be improved, and we observed a shortage of residential resources. Specifically, the Health Care Agency in October 2014, implemented a change in policy to reduce availability of residential treatment beds, thereby creating a waiting list. The number of beds for AB109 offenders was limited to 25 per month. Several of the OCPD staff indicated that this restriction prevented the reform of AB109 offenders who would greatly benefit by residential drug treatment. There were also indications of a need for more sober-living beds, and more housing for identified sex offenders.

The Grand Jury observed that the intensity of supervision for AB109 offenders fell short of recognized standards. The number of supervision contacts was inconsistent

with high-risk classifications, which further extends to a number of home visit and collateral visit (e.g., family, friends, and workplace) shortfalls.

The OCPD has been recognized as one of the few probation departments in the state that has made significant efforts to implement the letter as well as the spirit of AB109. The sponsoring of an AB109 Summit at Concordia University is an indicator of the positive efforts made by OCPD to continue improving the overall supervision of this challenging population. The Grand Jury concluded that changes by the OCPD could result in more optimal conditions for the reduction of recidivism and long term gains in community protection.

FINDINGS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are submitted to the Presiding Judge of the Superior Court. Based on its investigation titled "AB109 Offenders: Are Current Probation Strategies Effective?" the 2014-2015 Orange County Grand Jury has arrived at eight principal findings, as follows:

- F.1.** Orange County Probation Department's Policies and Procedures Manual is consistent with professional standards for use of risk assessment tools and determination of classification levels for each AB109 offender.
- F.2.** Orange County Probation Department's Policies and Procedures Manual is not consistent with professional standards for development of supervision plans for AB109 offenders, including frequency and types of contacts.
- F.3.** Orange County Probation Department's Policies and Procedures Manual does not identify the maximum caseload size for Probation Officers supervision of AB109 offenders.
- F.4.** Orange County Probation Department's Policies and Procedures Manual does not provide adequate requirements for drug-testing classifications or frequency guidelines.
- F.5.** Orange County Probation Department's Policies and Procedures Manual does not provide adequate requirements to address the issue of drug-testing avoidance or recommend responses for AB109 probationers who attempt to avoid positive drug tests by failing to appear or by diluting their urine samples.
- F.6.** Orange County Probation Department does not incorporate current technology (refractometer) in its drug testing system. Including such technology may assist in the ability to quickly detect diluted urine samples provided by probationers.
- F.7.** The Orange County Probation Department and Health Care Agency have lost an opportunity to reduce recidivism by not increasing residential drug treatment options for AB109 probationers over outpatient treatment or incarceration.

- F.8.** There exists a need for increased housing availability for AB109 probationers who are homeless.

RECOMMENDATIONS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled "AB109 Offenders: Are Current Probation Strategies Effective?" the 2014-2015 Orange County Grand Jury makes the following six recommendations:

- R.1.** Standards and guidelines for AB109 offender supervision, such as number of contacts, home visits, drug tests, and collateral contacts based on the risk-needs assessment should be included in the Orange County Probation Department's Policy and Procedures (F.1., F.2.)
- R.2.** The Orange County Probation Department should take steps to lower caseload sizes consistent with American Probation and Parole Association standards of no more than a 40:1 ratio caseload per officer for high-risk offenders. (F.3.)
- R.3.** Standards and guidelines should be included in the Policies and Procedures Manual to address failures to report for drug testing. (F.5.)
- R.4.** The Orange County Probation Department should implement standards and guidelines in its Policy and Procedures Manual to address the frequently used technique of "flushing" to avoid drug detection and a refractometer or other dilution-measuring device should be used to improve the integrity of the drug-testing program. (F.4., F.5., F.6.)
- R.5.** The Health Care Agency and the Probation Department should assess current funding priorities and options to seek additional residential drug treatment beds. (F.7.)
- R.6.** The Social Services Agency should address the needs of the AB109 offenders who are homeless or who experience instability in housing. (F.8.)

REQUIRED RESPONSES

The California Penal Code section 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected official shall comment on the findings and recommendations pertaining to the matters under that elected

official's control within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code section 933.05, subdivisions (a), (b), and (c), provides as follows, the manner in which such comment(s) are to be made:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section 933.05 are required from:

Responses Required:

Orange County Board of Supervisors: Findings F.1., F.2., F.3., F.4., F.5., F.6., F.7., F.8. and Recommendations R.1., R.2., R.3., R.4., R.5., R.6.

Responses Requested:

Orange County Probation Department: Findings F.1., F.2., F.3., F.4., F.5., F.6., F.7., and Recommendations R.1., R.2., R.3., R.4., R.5.

Orange County Health Care Agency: Finding F.7., and Recommendation R.5.

Orange County Social Services Agency: Finding F.8. and Recommendation R.6.

COMMENDATIONS

The 2014-2015 Orange County Grand Jury would like to commend the Orange County Probation Department for its fine work in accepting the challenge of AB 109 offenders into its system. In spite of the Grand Jury's findings and recommendations for improvement, the Probation Department has made significant progress. This progress has even obtained State of California recognition.

"When Orange County is given a pill to swallow, even though some may see it as a bitter pill, they find a way to get it down. Orange County embraced Realignment, and the collaborative work around innovations in programs and sentencing have made it a leader in the state."

-Linda Penner, Chair of the Board of State and Community Corrections

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APPENDIX 1: PENAL CODE SECTION 3450

(Selected provisions, emphasis added.)

- National data show that about 40% of released offenders are re-incarcerated within three years.
- *Policies that rely on re-incarceration of parolees for technical violations do not result in improved public safety.*
- California must support community corrections programs and evidence-based practices that will achieve improved public safety.
- Realigning post-release supervision of certain felons to local community corrections programs through community-based punishment, evidence-based practices, and improved supervision strategies will improve public safety outcomes and facilitate successful reintegration. Evidence-based rehabilitation programs that increase public safety by holding offenders accountable will generate savings. (Evidence-based practices refer to supervision strategies that have been demonstrated by scientific research to reduce recidivism.)
- Community-based punishments means evidence-based sanctions and programs that include, but are not limited to the following:
 1. Short-term "flash" incarceration in jail for a period not to exceed 10 days.
 2. Intensive community supervision.
 3. Home detention, electronic monitoring, or GPS supervision.
 4. Community service.
 5. Restorative justice programs.
 6. Work, training, or education.
 7. Work, in lieu of confinement
 8. Day reporting
 9. Mandatory residential or non-residential substance abuse programs.
 10. Random drug testing.
 11. Community-based residential programs that provide a variety of services.

APPENDIX 2: OCPD MISSION STATEMENT

We are dedicated to a safer Orange County through positive change.

We believe:

- Community protection can best be achieved via a role that balances enforcement activities and supportive casework.
- Our employees constitute our most valuable resource for accomplishing our Mission.

We are committed to:

- Delivering quality services in an effective and fiscally responsible manner.
- Providing a positive, challenging and supportive work culture.
- Improving our services through teamwork and program innovation, consistent with current knowledge influencing the field of corrections.
- Advancing professionalism through participation in joint efforts to improve the effectiveness of community corrections.
- Delivering services with integrity and in a manner which respects the rights and dignity of individuals.

Mission Statement

As a public safety agency, the Orange County Probation Department serves the community using efficient and research supported corrections practices to:

- Reduce Crime
- Assist the Courts in Managing Offenders
- Promote Lawful and Productive Lifestyles
- Assist Victims

APPENDIX 3: REVIEW OF PROBATION FILES

The four cases presented here were randomly selected. A supervising probation officer accompanied the reviewer to several probation office cubicles. The cabinets were opened, and files were selected at random.

Case Example #1

A female AB109 offender was homeless, residing at the Orange County Civic Center, and admitted using methamphetamine since being released from jail. Although she was referred to a detox program to be followed by residential drug treatment, there was no evidence in the file that she entered either one. As in other cases, flash incarceration was used on one occasion. As of her last contact with the PO, the progress report indicates that she “continues to use drugs” and needs detox before she enters a program. The reviewer was unable to determine if a date had been established for either detox or residential drug treatment. Thus, at the time of the review, the AB109 offender, on active supervision, was homeless, addicted to methamphetamine, unemployed, with no identifiable admission date for detoxification. If unemployed and addicted to methamphetamine, one can reasonably conclude that this AB109 offender is continuing to be involved in criminal activity to support a drug habit, all while on Post-release community release supervision.

Case Example #2

The offender, an AB109 case with a substance abuse history, had made a sufficiently favorable adjustment to supervision and was transferred to a Field Management (FM) caseload, or what is commonly referred to as an “administrative” or “bank” caseload. These cases are considered such low risk that they have no need for active supervision by a PO. That is, there is no personal face-to-face contact with their PO. These caseloads can be in excess of 200 cases per officer. They usually do not report to a PO and merely report to a kiosk where they complete and submit their monthly supervision report.

In this FM case, the offender was on supervision for drug sales and drug use. The file reflected an extensive drug history, and a risk score of 29 and needs score of 27 were noted. It appears he was downgraded to FM during the most recent assessment period between January 10, 2014, and July 28, 2014. The case file indicates the offender was arrested for multiple health and safety code violations in early January 2014. He had also been arrested in late January 2014, for drug paraphernalia and possession of drug syringes. Previously, in May of 2013, he had been arrested by the PO and booked into county jail for a 10-day flash incarceration for submitting two positive urine tests. In December of 2013, the PO again utilized flash incarceration for drug use and submitting positive drug tests. The offender is subject to Penal Code section 290, narcotic registration. On or around November 2013, the offender was sentenced to 180 days in county jail following a drug conviction.

During a seven- month period between June 30, 2013 and January 9, 2014, the PO documented the following contacts: office, 9; home, 0; searches, 1; drug tests, 3;

PO arrests, 1. Despite this problematic supervision history, this offender was inexplicably placed on a FM, decreased-supervision caseload with no direct contact with the PO, and no drug testing. As expected, he was transferred back to a higher level of supervision when he was arrested for new law violations.

Case Example #3

The third case example provided a reassessment plan/evaluation prepared in early May 2014, appearing to cover the period from November 1, 2013, to April 30, 2014. The offender had a risk score of 26 and a needs score of 36, thus putting him at the higher end of high risk. His prior record included a significant history of alcohol related convictions, but no evidence of drug use. The reassessment report reflected multiple referrals to outpatient treatment, psychological counseling, as well as a residential program. The case file reflects that in 2013 the PO conducted two searches, one home visit, eight office visits, and four drug tests (once in February and three times in April). A scarcity of testing after April may have been due to residential treatment, multiple flash- incarceration periods, and a jail sentence of 90 days.

This case demonstrates the high level of activity generated by AB109 cases. In this case, there were multiple violations, multiple (3) flash incarcerations, a 90-day sentence, placement at the Phoenix House, and an extension at the Phoenix House followed by a discharge over a positive drug test. In addition, he sustained at least two arrests, was placed in alcohol detox, and was referred to outpatient and psychological counseling. An entry in the file indicates that after being discharged from Phoenix House, he went to "Treehouse in Orange" while waiting for a "bed" at "Opportunity Knocks."

Case Example #4

The fourth and last case example is an AB109 offender with the primary offenses being theft with three priors, burglary, and possession of a controlled substance. He has a risk score of 33 and a needs score of 32. The case file reflects that he is a chronic violator. He was required to report to a residential drug treatment program but failed to report. Since being released in December of 2011, he has had multiple violations. On one occasion, he was revoked and reinstated. He has also absconded and experienced an arrest for vehicle theft, receiving a 180-day jail sentence along with one for 360 days. The PO has utilized flash incarceration on two occasions. The offender has a serious drug history, but has refused drug treatment. While he has continued on PRCS and/or MS time after time, it is questionable whether he is a suitable candidate for further community supervision.

APPENDIX 4: PRINCIPLES OF EFFECTIVE TREATMENT

Arthur Lurigio PhD
Loyola University - Chicago

Lurigio (2000, pp. 514-520) presents several principles of effective treatment for drug-using offenders. These principles can provide a guide for the OCPD to improve the program integrity of their drug treatment program.

1. Drug Assessment & Treatment Matching

The use of a standardized assessment tool like the Addiction Severity Index and the Offender Profile Index measures the severity of drug use. The OCPD already utilizes a Risk/Needs assessment tool; however, the Addiction Severity Index could assist the officer in determining what level of testing is needed for the AB109 offender. The drug treatment literature generally finds that no single treatment modality fits all offenders.

2. Length of Participation

In referring the AB109 drug-abusing offender for treatment, behavior/addiction management rather than a total cure is generally more realistic. According to the research 3-9 months works best, and relapse is to be expected before abstinence is achieved.

3. Treatment Structure

For substance-abusing offenders, this principle is critical if success is to be achieved. In the early stages of supervision, treatment and surveillance should be highly structured. A strict urine drug-testing system should be implemented and maintained. Incentives of different types should be included as well as imposition of negative consequences to encourage offenders to remain "clean." The OCPD already utilizes a continuum of sanctions as well as incentives. However, what is needed is more consistency, and especially certainty that some action will be taken when drug use is detected. "Sanctions should be leveled against participants who fail to adhere to program regulations. To be most effective, sanctions must be clearly specified, tied explicitly to infractions, and imposed swiftly. They should also be progressive and commensurate with the severity of rule breaking (pp.516)."

4. Treatment Integrity

The integrity of the drug-testing program must be monitored at all stages of testing and treatment. AB109 officers need more training to improve their skill and effectiveness in controlling high-risk behavior like drug use. How to properly collect a sample, awareness of testing manipulations like no-shows, flushing, substitute samples, hidden devices, and examining the offender through "skin-checks" should all be utilized to allow the officer to detect and intervene at the earliest possible point. In order to be effective in the area of detection, intervention, and drug treatment, AB109 officers need to be specialists. As an alternative, given the additional time requirements for

implementing a credible drug-testing program, the OCPD should consider contracting with a provider for these services. Research reflects that having a credible drug-testing program that detects drug use early on and intervention with treatment and/or sanctions, will result in an increase in technical violations, but a decrease in new criminal conduct. In short, the safety of the community will be enhanced. No shows for testing must be addressed; diluted specimens should not be considered valid tests; and existing technology should be utilized to measure specific gravity (level of dilution). A high level of testing integrity is lacking in the OCPD as relates to AB109 offenders.

5. Aftercare Treatment

Residential drug treatment must be followed by continued outpatient treatment and/or 12-step participation. The continuity of treatment is critical if the offender is to sustain a drug-free lifestyle. Funding problems currently limit the number of drug abusing offenders who enter the most intensive form of treatment, the treatment modality that is most suitable for the substance-abusing offender.

“IRVINE” GREAT PARK: A LEGACY OF HUBRIS?



GRAND JURY 2014-2015

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EXECUTIVE SUMMARY

The lack of progress of the Great Park over the past ten years has been seen as unsatisfactory to a large number of residents of Orange County. Many were dissatisfied with its direction and lack of transparency. Lack of transparency was a serious issue of concern to the County’s citizens as many citizens believed they were not adequately advised of many of the project’s activities and spending.

There was strong evidence of serious mismanagement of the Great Park project, costing taxpayers significant amounts of public monies. Since the City of Irvine took on the role of land developer, it must be held responsible for the project’s mismanagement. It also appeared that roles and responsibilities were not clearly defined and maintained. This created significant havoc within the operations and management of the project.

The project shifted course several times without a sense of direction. Overall objectives and the articulation of those objectives were characterized by vacillation, indecision, inconsistency, and confusion. As a result, the project lacked an effective decision-making process resulting in ever-increasing tension and contradictions within, often unknowingly and unintentionally. To the public the project seemed stultified and lacked leadership and direction. Unfortunately, what the public got bears little semblance to the pipedreams they were sold.

With the current agreement adopted by the City to construct 688 acres in the Great Park, there is hope that the project has been restored and moving toward completion. This will require the development of realistic, coherent objectives in an orderly, systematic way as the project takes on a new direction. These new objectives must be articulated openly, clearly, and consistently. It is essential that the Irvine City Council restore a sense of stability and confidence on a path to the completion of the project for all to enjoy.

BACKGROUND AND FACTS

The Early Years

After long, distinguished, and loyal service, Marine Corps Air Station, El Toro (MCAS El Toro), was decommissioned by a US government commission authorized under the Base Realignment and Closure Act of 1990. MCAS El Toro was formally closed in 1991. Initial proposals included developing the closed base into an international airport. This was codified with the passing of a 1994 county-wide ballot measure, Measure A, endorsing the development of a commercial, international airport on the site of the old base. Measure S, meant to overturn Measure A, was defeated in March 1996. Opponents of the airport proposed a third ballot initiative, Measure F, that would require a 2/3 majority of voters to build any airports near residential areas. This measure passed in 2000, but later the courts found the measure “constitutionally vague and illegal,” thus the election result was disaffirmed.

With the annulment of Measure F, the City of Irvine proposed the creation of a Great Park (OCGP) at the old Marine Corps Air Station site of approximately 1,300 acres. This was to be a grand park embracing environmental sustainability and setting a

new standard for urban park design and planning. A chronology is presented in Appendix 1.

Proponents of the new park marshaled forces and Measure W¹, “The Orange County Central Park and Nature Preserve Initiative,” was placed on the ballot. This measure banned any airport construction on the old MCAS El Toro site and amended the Orange County General Plan to allow the construction of an urban park for the benefit of all Orange County citizens. Measure W was passed by public vote on March 5, 2002.

The City of Irvine assumed control over this project stating that it would comply with the tenets of Measure W. In March 2003, Orange County Board of Supervisors agreed to a property tax transfer agreement with the City of Irvine paving the way for annexation. Annexation was formally approved in November 2003 by the Local Agency Formation Committee (LAFCO) with the consent of the Department of the Navy.

The initial plans for the full development of the 4,700 acres of the old El Toro Marine Corps Air Station were as follows:

- Area dedicated to agriculture
- Senior citizens’ housing
- University campus
- Retail establishments
- 1,678-acre parcel for 1,100 units of residential housing
- Residential housing adjacent to 45-hole golf course
- Elementary school
- Recreation area
- Public transportation center
- 1,500 residential unit “transit village” with mixed-use adjacent property
- Research and development business park
- Expansion of the Irvine Auto Center
- Wildlife corridor
- 1,347 acres for the Great Park

The Orange County Great Park Corporation

The Orange County Great Park Corporation (OCGPC) was incorporated as a non-profit corporation [501(c)(3)] by the City of Irvine on July 7, 2003. The Board of Directors for OCGPC met for the first time on December 5, 2003 and formalized the makeup of the board to be nine directors, five of whom must be members of the City of Irvine City Council. The remaining four members would be “at large” members appointed by the Irvine City Council.

With the passage of Measure W, the City of Irvine annexed the former Marine Corps base on January 14, 2004. This annexation gave governmental control but not ownership to the City of Irvine. With annexation of the property, the City of Irvine gained control of zoning and other powers for the property and re-formed the Great Park

Corporation (OCGPC) to “...receive, develop, and operate property and improvements located in the City of Irvine...for public park, recreation, exposition and open space purposes as the ‘Orange County Great Park’ project...” (Orange County, Measure W, 2002).

City, Private, Federal Commitment

The US Navy decided in 2005 to auction off ownership of the former MCAS El Toro’s four parcels. A residential and commercial developer (Lennar Corporation) purchased all of the parcels on February 16, 2005 for \$649.5 million. With this purchase, there was created a unique relationship between the City of Irvine, Lennar, and the Federal government. It was envisioned by the Navy that the 4,639-acre MCAS El Toro property would become a model to possibly be emulated by other decommissioned military properties.

After this purchase, the City of Irvine formed a development agreement with the Lennar where they were granted limited residential/commercial development rights in return for the land and capital that would allow for the construction of the Great Park. The agreement required Lennar to transfer more than 1,347 of the 4,639 acres it had purchased to public ownership.

There were caveats accompanying the sale. At the time of the sale the Navy had deemed certain portions of the base unsuitable for complete transfer as they were potentially contaminated from military operations. The Navy had responsibility for the continued environmental cleanup of these areas. The City was not prohibited from development in these areas, but was required to receive permission from the Navy prior to disturbing the land.

Financing the Great Park

As listed in the 2004 business plan of the Great Park, a \$401 million budget was adopted based on an agreement with Lennar who agreed to pay a \$200 million developer fee. Additionally, Lennar agreed to construct \$201 million worth of infrastructure that would be recovered by a Community Facilities District (CFD), also known as “Mello Roos” and a bond sale secured by the property so that future home buyers would pay off the bond (Alshire & Wynder, 2015, p. 3).

The plan also projected that within five years the park could pay operating expenses by generating \$15 million per year in annual revenues from parking and user fees. This plan projected build out of the park in 6-7 years at a cost of \$350 million, though great urban parks of similar size had taken 50 years to complete.

Irvine Holds Worldwide Design Competition

In April 2005, the Great Park board had a worldwide design competition for the Great Park. Submissions were received from around the world and a master designer was chosen.

The chosen design was a massive, ambitious undertaking with 16 major elements in its design (the “Original Design”). According to the master plan chosen by the City the following were proposed:

- Agriculture and Food center
- Arts and Culture Exhibition
- Aviation Museum
- Botanical Gardens
- Center for Communication Organizations
- Demonstration Garden
- Equestrian Center
- Fire Museum
- Library
- Multicultural Center
- National Archives
- Orangewood Academy
- Sports Park
- Visitors’ Center
- Water Science Park
- Amphitheater
- Lake
- Canyon

The chairman of the Orange County Great Park Corporation board publicly stated:

What I learned on the visit to New York is that within the \$401 million available to us, \$201 million is buried for the most part in the ground in backbone infrastructure and \$200 million above ground, we can expect to see a master design that comfortably fits within the \$200 million above ground and includes, yes, the Great Canyon that has been proposed and has been such a signature piece which has its own microclimates and many more other elements within it, including the likely embedding of earthworks structures as the canyon moves along toward the lake, toward the amphitheater which will be included as well. All of these are affordable. (Aleshire & Wynder, 2014, p. 3)

On July 24, the OCGPC Board recommended and Irvine City Council approved the development of a schematic design contract (“Schematic Design (Contract #5759)”) for \$27.3 million. The purpose of the contract was to develop construction documents in accordance with the Master Design Plan and to establish reasonable cost estimates for the Great Park features included in the Schematic Design. On September 27, the OCGPC Board adopted the Comprehensive Master Plan. The City was advised in 2007 by the original designer that the estimated total cost to build the park was \$979.8 million (Alshire & Wynder, 2005, p. 5) .

The master plan was completed in 2007 and the decision was made by the Board to proceed with the Schematic Design. Also approved was a “preview park” to be

constructed on 27.5 acres costing \$13.9 million in order to present to the public an overview of the final product.

Irvine Moves Ahead with Balloon and Preview Park

Great Park Balloon. In 2007, Irvine City Council authorized approximately \$4.1 million in expenditures for design, construction, operations, and insurance for the Great Park balloon. Later that year, Irvine City Council authorized an additional \$11.4 million for design and construction of the Balloon Enhancement Project and \$2.5 million for first year operating costs, totaling \$18 million. Features included new signage and lighting, parking and site access, night flights, a revised multipurpose 5-acre landscaping, and cleaning and painting an existing hangar to be used for future events. On July 14, 2007, The Great Park Balloon opened to the public. Features included parking, lighting, temporary visitor center, the observation balloon, and associated infrastructure and utilities.

Preview Park. In 2008, the Balloon Enhancement Project was expanded to become the Preview Park, a 27.5 acre project. The features that opened in 2007 now became known as Phase 1 of the Preview Park. A Palm Court, an outdoor performance garden, and a visitor center were added to the existing plan. The Irvine City Council budgeted approximately \$7 million for construction of the entire Preview Park.

Later in April 2008, The City of Irvine entered into a contract for \$1.75 million to construct another portion of the Preview Park. This effort included night-lights, a multipurpose lawn area, a bio-swale demonstration, trees, ground covering planting, portable restrooms, fencing, and furniture. A total of approximately \$7.7 million in change orders was authorized for this construction.

The second phase of the Preview Park was completed in July 2008 and included a lawn, trees, park furnishings, additional lighting, a timeline prototype, shade structures, and a relocated and revamped visitor center. The third phase was completed in July 2009 and included transplanting mature trees into the lawn area and the construction of the Farm and Food Lab.

Strategic Master Plan Developed

From 2006 to 2008 costs had escalated to a critical point. As a result, the Great Park CEO ordered a 10-year strategic plan to be developed for 2009-2020. This was to be a detailed plan that included objectives, goals, milestones, and budgets.

Revolving Door CEOs

In August 2008 the last of five CEOs of the OCGPC was installed. The CEO was advised that he would report to the OCGPC Board of Directors, through the Chairman.

Moment of Truth

Beginning in 2007, the US economy was facing a recession. Home construction started to grind to a halt. As the recession was in full swing over the next few years,

Lennar told the City of Irvine that their promise of \$201 million toward the Great Park infrastructure was not possible. City of Irvine renegotiated a Development Agreement to include the following, according to the Strategic Business Plan (2009):

- A sum of \$18 million for maintenance and operations (O&M) to be paid over five years beginning in 2010 through fiscal 2014.
- A sum of \$9 million in lieu of golf course fees to be paid over nine years, beginning in 2010.
- A maximum of \$9.5 million to be paid yearly from CFD tax revenue receipts to be used for park O&M on an “as needed” basis beginning in fiscal 2015.

In late 2008, OCGPC came to the stark realization that the project could not continue at the current “burn rate” which would deplete all funds in seven years. In December 2008, OCGPC instructed that the schematic design be closed down. By closing down the schematic design, the City was able to recover \$5 million which was applied to augment the budget for 2009. The situation now was that after spending \$46.9 million (\$11 million for the Master Plan and \$36 million for the Schematic Design of the Great Park), the master design was closed down.

At the current rate of expenditures, the coffers would soon be emptied. This became the tipping point of the project. With the projected delay of the \$201 million and a rocky economy, it became painfully obvious to OCGPC that this cash-hungry effort was “off the tracks” and needed to change direction.

Western Sector Park Development (WSPD)

Upon the closure of the original master design, City staff proposed a new project plan, referred to as the Western Sector Park Development Plan (the “WSPD” Plan”) that was fully approved in 2009 and included the North Lawn, Palm Courts Arts Complex, and other areas. WSPD’s first phase was completed and opened to the public in 2011, and the entire project was finished in October 2013 with a total cost of the Great Park exceeding \$200 million.

Changing of the Guard (Election of 2012)

The city election in 2012 changed the composition of the Irvine City Council. The Council voted in significant changes to the Great Park project in 2013:

- The four positions for at-large members on the Orange County Great Park Corporation Board of Directors were eliminated
- Management of the Great Park project was consolidated under the authority of the Irvine City Manager
- Contracted a forensic accounting firm, Hagan, Streiff, Newton, & Ohiro (HSNO), to audit the Great Park financial records
- A special counsel was retained to investigate the management of expenditures of Great Park funds
- The OCGPC remained, which only consisted of members of the City Council

New Development Plan

On November 26, 2013, the City of Irvine entered into an agreement with Heritage Fields (a subsidiary of Lennar) wherein this entity committed to construct or cause the construction of the Great Park. This agreement became known as ALAll (ALAll, 2013, p. 2). The City granted Heritage Fields the role as the prime contractor with the right to fund, oversee, and cause the phased construction of selected improvements to the Great Park (p. 5). The agreement provided that Heritage Fields would spend at least \$172 million (Minimum Improvement Investment Amount [MIIA]) to design, obtain permits for, and build Great Park improvements including “backbone” (infrastructure). If there are any funds remaining from the initial \$172 million, Heritage Fields and the City of Irvine would agree upon additional improvements to be constructed (p. 5). The City obtained this additional funding in exchange for increases in the number of homes that could be developed by Heritage Fields.

For Heritage Fields’ \$172 million investment, the City approved the addition of 4,606 residential units over the initial approval, totaling approximately 9,500 units. Heritage Fields also received approval for the addition of 3.8 million square feet of commercial development which quadrupled the development opportunity. It must be noted that the City does not directly receive any funds since Heritage Fields will manage the park’s construction and its funding.

New Park Plan

A new plan was developed to build 688 acres at the Great Park site (the “New Plan”) An overview of the plan included a bosque³, wooded nature area (Upper Bee), 18-hole golf course, and sports complex.

The Upper Bee is 36 acres that consists of walking paths and trails and has an estimated cost of \$5 million. The Bosque is 40 acres and costs \$17 million and includes trees, shrubs, trails, dog-park, playground, small amphitheater, and Farm + Food Lab. The golf course includes 188 acres with a cost of circa \$26 million which will also fund 71 acres of farm fields. There will be 260 acres left for Irvine to develop a cultural terrace that may include museums and a library using funds from public and private sources. (A more definitive breakdown is provided under Investigation section.)

Community Facilities District

On March 26, 2013, Irvine’s City Council adopted a series of resolutions to authorize the formation of the City of Irvine Community Facilities District (CFD) No. 2013-3 (Great Park), designating three improvement areas (No. 1,2, & 3) which consisted of the OCGP and the Great Park Neighborhoods. These resolutions also imposed a special tax within Planning Areas #30 and #51.

The special tax proceeds were intended to fund the \$383.3 million estimated cost for the backbone infrastructure that will serve both the Great Park and the Great Park neighborhoods. Note that this special tax is in addition to the Proposition 13 primary property tax of 1% of market value. The special tax imposed by this CFD for detached

residential property ranges from \$4,385 to \$12,356 per year based on residential building square footage. The non-residential commercial and industrial property assessment is \$1.50 per square foot. The term of this CFD is for 40 years. After that time, 65.84% of this special assessment will be retired; however, the remaining percentage of this special tax will be levied into perpetuity.

Great Park Redevelopment Agency

The City of Irvine created the Irvine Redevelopment Agency (IRDA) to support the development of the Great Park. This new organization allowed for the money to be borrowed for the development of the Great Park by committing future tax fund increases for debt payment. The City of Irvine gave 35 acres of the Great Park land that it obtained from Lennar to the IRDA. Then in 2007, the City of Irvine loaned the IRDA \$134 million of the Great Park money that it also obtained from the Lennar at 9% interest.

The State of California forced the dissolution of all RDAs. This forced the IRDA to transfer its assets to a successor agency in February of 2012. The Successor Agency was then authorized to only pay off the outstanding debt. The City of Irvine filed suit against the State in an effort to reconcile the obligations. In October of 2014, a settlement agreement was approved by the court which authorized \$292 million of future tax to be used to wind down the IRDA.

Evolution of the Great Park

To present a clear picture of the development of the Great Park over ten years, Table 1 below is presented as a depiction of how the project evolved from 1,347 acres.

Table 1: Evolution of the Great Park

Year	Phase	Planned	Completion
2005-2007	Original Plan	1,200 acres	None
2007-2009	Preview Park	27 acres	27 acres
2009-2013	Western Sector Park Development	200 acres	200 acres
2013-present	Heritage Fields	688 acres	In work
TBD	Remaining (260 acres)	None	TBD

Source: 2014-2015 Grand Jury

Through 2014 the total expenditures, construction and non-construction costs, totaled approximately \$251 million as depicted in Table 2.

Table 2: Construction and Non-Construction Costs

Construction Costs	
Hard construction	\$61.8 million
Soft construction outside vendors	\$62.0 million
Soft construction GPC	\$0.311 million
Total Construction Costs	\$124 million (rounded)
Non-construction costs	
Outside vendors	\$32.2 million
City administration	\$54.6 million
GPC admin/non vendor	\$40.4 million
Total Non-Construction Costs	\$127 million
TOTAL COST	\$251 million (rounded)

Source: (HSNO, 2014)

Measure V

The citizens of Irvine recognized the need for transparency regarding the Great Park and in 2014 voted in Measure V (Orange County Great Park Fiscal Transparency and Reforms Act) (Appendix F). This act: (1) prohibits any money from being spent on the Great Park until approved by the Orange County Great Park Board of Directors or the City Council at a public meeting, (2) requires an annual audit of the Great Park funds by an outside auditing firm and requires that it be posted on the city website, and (3) establishes whistleblower protections for anyone who reports waste, fraud, or abuse of the Great Park funds.

REASON FOR STUDY

Over the ten plus years of the Great Park project, there have been various media reports, two Grand Jury investigations, and recently a forensic audit and special counsel's investigation appointed by the City of Irvine. The Grand Jury feels that it is important to conduct an objective investigation to inform the public as to what happened and where the money went, the current status of the park, and plans for the future.

METHODOLOGY

The Great Park has been the subject of two previous Grand Jury reports, numerous news articles, a review by the District Attorney's office for possible criminal implications, a City of Irvine commissioned forensic audit, and an independent counsel appointed by the City of Irvine to investigate Great Park activities. This report is independent of these investigations; however, this report contains shared elements from these other inquiries.

The Grand Jury used the following in producing this report:

- City of Irvine, Orange County Great Park Corporation, and Redevelopment Agency documents, including agendas, minutes, staff reports, resolutions, agreements, and contracts

- City of Irvine Consolidated Annual Financial Reports (CAFR), financial projections, accounting records and audits
- Personal interviews with Irvine City Council members
- Personal interviews with selected members of the Board of Directors of Orange County Great Park Corporation
- Personal interviews with Irvine city personnel
- Review of publicly released sworn depositions
- Review of relevant city and corporation documents
- Design reviews
- News articles
- Internet sources
- Personal visits
- Review of various audits, including forensic audit

There were many variables encountered in this investigation due to the massive amount of data collected. It was very difficult to isolate specific factors that contributed to problems uncovered in the investigation. Nothing was taken on face value alone and attempts were made to provide verification, substantiation, and evidence in support of statements, facts, and findings.

INVESTIGATION AND ANALYSIS

The Great Park has been a topic of conversation and controversy over the past ten plus years. As previously mentioned, there have been various investigatory efforts by the media, previous Grand Juries, the District Attorney, and recently, an outside forensic audit and a review by a special counsel to the City of Irvine. This investigation examines “what went wrong.” This is followed up with an analysis of “where we are going” relative to the Great Park.

Great Park Vision

The Irvine City Council and Great Park Corporation Board had a vision of a metropolitan park that would rival the country’s great city parks but neglected to realistically consider the costs involved with such a large project⁴. According to its own statement: “The City remains proud and steadfast in its proven commitment to create a world-class park development that will benefit all people of Orange County—and, indeed, all of Southern California⁵” (City of Irvine, 2006, p. 2). The Orange County Great Park Corporation made the following statement as late as 2008:

Other great metropolis parks have required fifty years or more to develop. By contrast, our Great Park development strategy—harnessing the power of private capital and the benefit of enlightened public planning—will enable all key elements of the Great Park to be developed in less time. We will have a Great Park larger than New York’s Central Park, San Francisco’s Golden Gate Park, and San Diego’s Balboa Park combined that will be developed in perpetuity with private dollars. (OCGPC Board of Directors, 2008, para. 1).

Over the years, the City reported in a press release to the public that the estimate to complete the Great Park was \$353 million (Alshire & Wynder, 2015, p. 25). However, through the years the City received estimates ranging from \$1.3 to \$1.5 billion up to \$3-5 billion over 25 years (p. 16). These highest estimates were not publicly reported by the City.

The Grand Jury concluded that the City of Irvine adopted a vision of the park that was beyond its ability to finance and did not develop a sufficiently detailed development plan to support this original vision.

The Current Vision Looking Forward

The City of Irvine City Council has determined that it was better suited to assume the traditional role of policy and oversight of property development rather than the role of "prime" developer. Accordingly, the City entered into an agreement with a private developer, Heritage Fields, to develop 688 acres of the Great Park for \$172 million of Heritage Fields' funds. In exchange, the Heritage Fields' parent corporation would receive additional housing entitlements while the City would retain the right of permits, inspection, and oversight. The City also underwent organizational changes where program oversight would be under the City Manager (Appendix D).

The New Plan bears little resemblance to the Original Plan. The New Plan is for a "greenbelt, standard" park; and a new Master Plan was created which includes a bosque, wooded nature area (Upper Bee), 18-hole golf course, and sports complex (expected to open in 2016).

Table 3 is a breakdown of the New Plan according to acreage, cost to construct, and cost per acre. There will be 260 acres left for Irvine to develop a cultural terrace that includes museums and a library with the intention of using funds from public and private sources. To date, the City has not made a decision to build the cultural terrace or commit any funding.

Table 3: Heritage Fields (FivePoints Communities) Plan

Parcel	Parcel Name	Acreage/ Size	Cost to Construct	Cost/Acre
1	Sports Field	175	\$109,372,233	\$624,984
2	Bosque/Upper Bee Canyon	40	\$16,670,819	\$416,770
3	Trails	33	\$4,895,763	\$148,356
4	Golf Course	188	\$26,012,280	\$138,363
5	Agriculture	71	0	0
6	Wildlife Corridor	178	\$15,048,906	\$84,544
	Total	688	\$172,000,001	\$251,095

Source: FivePoints Communities (2013). "Concept Plans and Programming"

The Grand Jury has determined that the New Plan is supported by a viable detailed plan and by constrained funding as the New Plan is largely being funded by the Heritage Fields in exchange for housing permit increases given by the City.

Management

The Orange County Board of Supervisors declined to take the lead in the development of the Great Park or accept any responsibility in its financing or construction (City of Irvine, 2006). The City of Irvine assumed total responsibility for the management and outcomes relative to the Great Park in the “Irvine Way.” (The “Irvine Way” was coined by the City Council but was never fully explained or defined.)

The City of Irvine, as the entity with land use authority for the Orange County Great Park and which legally owns the 1,347 acres of land on which the Orange County Great Park will be developed, is obligated as a matter of law to retain ultimate control over Great Park land use decisions.

It is also appropriate for the City of Irvine to retain ultimate responsibility for the development of the Orange County Great Park because the City of Irvine has committed substantial resources to advance its development. (City of Irvine, 2006, p. 2)

The Orange County Great Park became, in effect, the Irvine Great Park. Therefore, any findings of mismanagement and misuse must fall on the Irvine City Council where it appropriately belongs.

Organizational Structure

The original structure. The Irvine City Council and the Orange County Great Park Corporation eschewed the traditional organizational structure for large civic projects. The Council elected to have a structure wherein all of the meaningful decisions would rest at the top level. The City Council would have the OCGPC Board, the City Manager, and the Irvine Redevelopment Agency (IRDA) report to it. The OCGPC CEO would report to the OCGPC Board and the City Manager. The OCGPC Board of Directors was to become an advisory board to the City Council. A depiction can be found in Appendices C, D, and E.

The OCGPC was relegated to an advisory role. It became part of the City government and not a separate entity. Employees of the OCGPC would be City employees and would work within the City’s organizational structure as a department under the City Manager. By 2006, the City and not the OCGPC was now acting as the prime contractor and operator of the Great Park.

The City Councilmembers made all the important decisions on every aspect of the park. The Great Park board was more advisory and could recommend, but the City Council made the decisions and the City staff recommended things to them. (Urch, 2014, p. 48).

The City Council was now responsible for planning, developing, and operating the Great Park. This was approved in December, 2003 (OC Grand Jury, 2005-2006, p. 4). Members of the City Council also sat as members of the OCGPC Board of Directors. This organizational structure was a harbinger of future difficulties.

With the establishment of this dual-government structure, all decisions were funneled to the City Council. This relegated City staff, and its various development standards and procedures, into a relatively limited role (Alshire & Wynder, 2015, p. 68). The result was that the roles of the City Manager and the CEO became marginalized by the political leadership. Over the ensuing years, this structure resulted in confusion regarding lines of authority, responsibilities, and accountabilities as some elected officials took an active role in the operations of the Great Park.

A warning was issued by the Orange County Grand Jury of 2005-2006 when it released a report stating: “The current structure is especially egregious to the citizens of Orange County because the exercise of control is maintained by a three member bloc on the Irvine City Council⁷” (p. 7). These were to be very prescient words.

Analysis. The Grand Jury has concluded that the early organizational structure, with the City taking the lead, was not workable. The project shifted course several times without communicating a sense of direction or destination. Objectives and articulation of those objectives were characterized by vacillation, indecision, inconsistency, and confusion. With blurred lines of responsibility and authority and no effective institutional organizational structure, the result was protracted decision-making and a bloated bureaucracy.

Business Plan

Original plan. In its earliest stages, the project was off to an inauspicious start as the City did not establish an adequately defined budget, milestones, schedules, or organizational structure. A proposed 2004 business plan, under the leadership of the City Manager, outlined a structure and contained budgets, schedules, timelines, and milestones. It was estimated that the project would cost \$353 million with revenues of \$200 million from developer fees and \$201 million from the developer for “backbone infrastructure” which would be repaid through a Community Financing District (CFD). This estimate was for a basic “grassy” horizontal plan without any structures (Sim, 2014). This business plan was rejected in 2004 (Alshire & Wynder, 2014, p. 2). A new business plan was drafted, but proved to be overly ambitious and eventually unsustainable over the ensuing years.

2009 strategic plan. Over ten years, there were five CEOs of the Orange County Great Park Corporation which might have hampered continuity of the project. A definitive, workable strategic plan was not developed until 2009 which finally gave structure and vision for the Park’s development.

2013 plan. The City adopted the New Plan. This plan is being developed and implemented by Heritage Fields, not the City of Irvine and ostensibly will replace the 2009 strategic plan. The City agreed to the deal as documented in the Memorandum of Agreement (ALAI). This agreement is a commitment by the contractor to provide all of the deliverables in a detailed plan according to a fixed schedule utilizing the contractor’s own funding. The value of this work has been determined to be \$172 million. In addition, a schedule for the work to be performed and a completion date is part of the plan. The Grand Jury has determined that this current plan is comprehensive and executable.

However, the City of Irvine still has a responsibility to ensure that the Agreement is implemented on behalf of its citizens. In addition, the Agreement retains the City of Irvine’s responsibility to support the development by ensuring code compliance, infrastructure implementation, and operations and maintenance support.

Analysis. The Grand Jury has concluded that the OCGPC did not develop a scope of work for its candidate firms that contained a definitive, comprehensive project plan with a budget, timelines, deliverables, and milestones. In the early stages of the project, the City appears to have not requested or given a budget restriction or timeline to participating contractors. The City’s rationale behind the no-budget approach was in order to avoid stifling the creativity of the applicants. This proved to have a deleterious effect on the project for several years.

The Grand Jury found that in support of the New Plan, the City has developed a definitive budget, timelines, deliverables, and milestones consistent with conventional practices in comparable land development projects.

Program Management

Contentious Relationships. In the early years, there was a general lack of direction and an awkward relationship developed between the OCGPC staff, elected officials, and City staff. Many of those involved in the project were not comfortable with the authority structure (Joyce, 2014, pp. 101-102). The project had unclear lines of authority and responsibility resulting in various parties seeking to control different aspects of the project. With unclear lines of authority, the project became a rudderless ship. It became painfully obvious that the “train was running off the track.”

The Orange County Great Park Corporation now operated as a stand-alone entity with its own budget and no control, review, or input by City staff (Joyce, 2014, p. 104). OCGPC never had a viable business plan and there were far too many managers (p. 108). As mentioned previously, the lack of clear roles and responsibilities resulted in some elected officials making operational decisions. The Grand Jury found several California communities including Mission Viejo, Belmont, Watsonville, and Norwalk that had ordinances restricting elected officials’ interference in operational activities under a city manager. The Grand Jury finds that the development of the Great Park would have benefitted from the existence of such an ordinance in Irvine.

Decision-Making

The project lacked an effective decision-making process thereby creating an environment of tension and contradictions, often unknowingly and unintentionally. With the passing of the years, many factions in the public felt that the project seemed stultified and lacked direction.

Mass Grading Decision

The construction plan as originally adopted by the City was to be one of mass grading and continuous construction versus building in segments. It appears that this mass grading was selected to keep the design plan intact and save on other costs

(OCGP Board, 2007, p. 3). The Grand Jury interviewed experts in the field who felt that phased construction would have been preferred where designed sections would be built in phases and the project would not move forward until funding was in place.

Summary of Irvine City Council’s Questionable Decisions

Over a period of ten years, the Irvine City Council has made many questionable decisions:

- The selection of organizational structure that proved unworkable
- Taking on the role of land developer versus putting project in the hands of experienced developers
- No comprehensive strategic plan and budget at the onset of the project
- The selection of mass grading versus phased/segmental construction
- Not maintaining reasonable controls over the invoices and pay applications
- No standard controls or quality controls were in place
- Allowing City Council members to be operationally involved in the project
- Revolving door CEOs that impacted continuity of the project
- Poorly written contracts
- Poor project monitoring
- Poor financial stewardship
- Excessive use of sole source and no-bid contracts
- No transparency to the public on progress and costs

With the acceptance of the role of land developer and center of all decisions, the Irvine City Council became accountable and responsible for all of the missteps the project has had over almost ten years.

Financial Stewardship

Organizational and Financial Complexity

In order to obtain a more complete picture of the Great Park project, the Grand Jury found it helpful to “follow the money.” The Grand Jury found that Orange County Great Park consolidated financial records do not exist. As a result, the Grand Jury compiled the records from several different funds in the City’s financial reports.

The first recorded financial transactions related to the OCGP by the City of Irvine were made in the fiscal year 2004-2005. Subsequently, revenues and expenses related to the OCGP were booked through at least three legal entities and over eight different funds. The three legal entities were the City of Irvine, the OCGP Corporation, and the City of Irvine Redevelopment Agency. Four different City of Irvine funds were utilized: the General Fund, the City of Irvine OCGP Fund #180, the OCGP Fund #280, and the OCGP Fund #286. Four additional funds were also set up by the Irvine Redevelopment Agency: the Irvine fund, the RDA Debt Service fund, the RDA Housing fund, and the Transit Guideway fund.

The Grand Jury concluded that the lack of consolidated Great Park accounts and the lack of a multiyear budget perspective was a major contributor to the issues of mismanagement and accountability in the development of the project. This also caused much of the lack of transparency of information and performance to the public.

Contracts Management

City requirements concerning bidding and sole source contracts were not followed⁷. Budgets, timelines, and controls were often absent in contracts. The Grand Jury could not uncover an appropriate project management plan as should have been delineated by the City in the master contract. The Grand Jury and HSNO found that many contract provisions were not monitored or enforced in several instances. In some instances, the City was not involved in the awarding of subcontractors, yet there existed a list of subcontractors which could not be terminated without City Council approval. This situation does not seem consistent with conventional practices. (See Appendix B for details.)

Questionable Expenses

Analysis of the OCGP expenditures indicated to the Grand Jury that significant amounts were spent on non-capital expenses, e.g. entertainment, events, public relations, etc.

Entertainment expenses. Over the years, the OCGPC provided a significant amount of entertainment at the Park free of charge to the public. The concerts were paid for by OCGP funds and the costs to just one vendor exceeded \$2 million. The use of parking and valet services was often available as well as catering for the events. The OCGPC records do not indicate whether any revenues were received by the park from the parking, catering activities, or from ticket sales to events.

Public relations and lobbying expenses. HSNO was not able to obtain supporting documentation as to objectives achieved, hours billed, and goals met with respect to some public relations expenditure. Often the City entered into fixed fee contracts with no tangible deliverables.

The Orange Balloon. The centerpiece of the OCGP is the giant orange balloon that provides a panoramic view of the Great Park from 600 feet in the air. Initially, balloon rides were free and later a nominal fee was charged. It was surprising to the Grand Jury that the balloon has ended up costing the OCGP almost \$12 million in construction and operating costs. There is also a \$1 million + per year contract that includes balloon operations with charges for a pilot and co-pilot. A significant liability insurance policy carried by the City also adds to the cost of operating the balloon. Revenues from the ridership on the balloon are minimal at best.

Food and Beverage Expenses. The Grand Jury performed a cursory review of a Great Park contractor’s Non-Sub Check Register (2004-2014). The total spent for food and beverages was over \$46,000 for staff without justification for the expense. The Schematic Design Agreement, Financial Policies and Practices, Section 1.1—Business

Expenses clearly states “As a general rule, meal expenses incurred while conducting routine daily work assignments will not be considered reimbursable or payable (e.g., employee evaluations, project discussions, etc.). Additionally, unreasonable or unordinary meal expenses will not be reimbursable or payable” (p. 5).

“**Freebies**”. In the years 2012-2013, the Park spent over \$1.3 million on free entertainment (City of Irvine, 2014c) and over \$14 million from 2006-2013.

Analysis of the Funding Sources for the Great Park

Developer’s fees. The initial source of funding for the Great Park was planned to be from Lennar Corporation. Lennar provided the land for the Great Park as well as \$200 million to the City of Irvine to develop the Great Park and to provide the backbone infrastructure for the housing development area. This transaction was part of the original ALA Agreement. As a result, these funds transferred to the City of Irvine along with the total responsibility to be the prime contractor for the development of the Great Park. These funds were authorized and largely spent on the original concept. The Grand Jury concluded that these expenditures did not provide value to the taxpayers, since the original concept was abandoned, tangible results in the development of the Great Park were not realized.

Heritage Fields proposed a new park design, which is called the “FivePoints Design.” The FivePoints design was a detailed design with a more conventional “green space” approach more commonly used by developers in Orange County. The City of Irvine and Heritage Fields signed the ALA II Agreement on November 26, 2013 in which Heritage Fields provides, but holds, the \$172 million funding to perform as the contractor. In exchange for providing these additional funds, Heritage Fields was granted additional development rights for more homes to be placed in the area.

Similar to most other contractor developments, the City of Irvine retains responsibility for oversight and code compliance support to the project. The City also is responsible for the operations and maintenance of the park after completion. The Grand Jury concluded that this role for the City of Irvine is more appropriate and should eliminate many of the problems with the original organizational plan in which the City was the prime contractor.

Community Facility Districts (CFDs) or Mello-Roos special taxes. The subsequent source of funds for the Great Park was planned to come from Community Facility Districts (CFD), commonly known as Mello-Roos, special taxes. This special tax is applied to all new owners in the MCAS El Toro development area. This is an additional tax on the citizens of Irvine who purchase homes in the development area.

The Grand Jury remains concerned whether the City of Irvine can responsibly spend this significant source of funding for the Great Park based on their past track record with public money. These CFD funds are estimated to be \$383.3 million over the next 40 years based on the increased number of homes in the ALA II Agreement.

Irvine Redevelopment Agency (IRDA). The third source of funds for the Great Park was to be from the Irvine Redevelopment Agency. A redevelopment agency is a

separate legal entity created by the City of Irvine. However, this agency was under the complete control of the City Council of Irvine. The original purpose of a redevelopment agency was for urban renewal, not for new development. A redevelopment agency is authorized to borrow funds which were to be used to upgrade a blighted part of a city. These borrowed funds were to be paid off from the increase in taxes generated by the upgraded properties.

The City of Irvine gave 35 acres of the land that it received from Lennar for the Great Park to the Irvine Redevelopment Agency. By making this transfer of an asset, the IRDA had the ability to borrow money on its own behalf as a separate legal entity by using this collateral. The City of Irvine then loaned the IRDA \$134 million at 9% interest in 2007 through the Purchase and Sale and Finance Agreement (PSFA). The expenditures of the IRDA consist primarily of interest expenses from this loan back to the City during the next five fiscal years which total over \$60 million.

The State of California realized the abuse potential of RDAs and forced the dissolution of RDAs through ABx1 26 and AB 1484. These acts caused the RDAs to cease doing business as a legal entity and created a successor agency for them. The only purpose of the successor agency is to pay off the bonds under State control and oversight, then cease to exist. As a result of this legislation, the IRDA transferred its liability to a successor agency on February 2012. The City of Irvine filed a law suit against the State in an attempt to still obtain the funding from the tax increase by asserting that the recognized obligations payment schedules for the IRDA amounted to \$1.943 billion. On October 24, 2014, the court approved a settlement agreement between the City of Irvine, IRDA Successor Agency, and the State Department of Finance in which the Successor Agency will receive \$292 million in future property tax revenue and turn it over to the City. The City will then provide \$14.6 million to the Land Trust, \$135 million for the operation of the Great Park and a \$142 million windfall for the City. The Grand Jury concluded that this was a significant win for the City. Regardless, the City has tax funds allocated to it for its operation from 2015/16 to 2027/28 from this IRDA settlement agreement.

Great Park Consolidated Income Statement.

Government entities have a tendency to fund activities on a yearly basis. The challenge for a major development like the Great Park is that it is a multi-year initiative. As a result, it is more difficult to actually see the overall budget and performance to that budget. The Grand Jury obtained prior years' City of Irvine Consolidated Annual Financial Report (CAFR) to generate a consolidated income statement for the Great Park.

Table 4: Statement of Revenues and Expenditures: 2005-2014

Revenues	Amounts	Revenue Percentage
Investment Revenue	\$31,217,000	11.5%
Services Revenue	\$26,196,000	9.6%
Developer Revenue	\$197,269,000	72.6%
Intergovt, Revenue	\$951,000	0.4%
Property Owner Rev.	\$14,892,000	5.5%
Other Revenues	\$1,171,000	0.4%
Total Revenues	\$271,696,000	100%
Expenses		Expense Percentage*
Capital	\$97,376,000	42.5%
Contract Services	\$83,930,000	36.6%
Salaries & Benefits	\$33,106,000	14.4%
Overhead	\$14,906,000	6.5%
Total Expenses	\$229,318,000	100%
Excess of Revenues	\$42,378,000	

Source: City of Irvine CAFR reports FY2005-2014 *Rounded

Analysis of Expenses: From Table 4, only 42% of revenues received by the City were used for capital infrastructure. Salaries and overhead are 20% and contract services are 36% of total expenditure. Detailed analysis of the OCGP expenditures indicated that significant amounts of public funds were spent on non-capital expenses (e.g., events, entertainment, and public relations) not related to the development of the Great Park.

Great Park Investment Results

What the public received for its investment in the Great Park falls dramatically short of the promises by the original City Council of Irvine. Of the 1,347 acres initially allocated to the Great Park, only 205 acres have been declared developed. 117.5 of those acres were for agriculture or farm, so only 88 acres should be considered improved. Only two vertical structures were built, the Visitor Center and a maintenance building. These are the results of the initial investment of \$229 million.

The Grand Jury concluded that the taxpayers did not get their money's worth regarding the Great Park investment during this first phase. The full responsibility for this lack of results must be with the Irvine City Council. An unfortunate result for the taxpayers was that the City of Irvine also purchased a master design concept costing over \$46 million which is now sitting on the shelf. Please see Table 5 below for details.

Table 5: Great Park Construction through 2013

Name	Acreage
Preview Park	7.70
Hangar 244/Carousel	1.73
Palm Court	7.77
Balloon Parking	5.04
North Lawn	16.27
South Lawn and Fields	25.88
Timeline-West	1.56
Timeline-East	1.53
Festival Site	17.07
Farm and Food Lab	1.68
Promenade Lawn	1.44
Road to Balloon Parking Lot	0.38
Total Acres Improved	88.05
Total of Built-up Areas	88.0
Incredible Edible Farm	6.5
Agriculture	111.0
Total Areas Developed	205.5
Total Cost	\$229,233,864
Cost per Acre	\$1,115,493

Source: HSNO, 2015, p. 3:

The Current Plan

The Grand Jury has concluded that the Current Plan is consistent with current funding availability and is in the hands of a developer who is able to implement the plan as opposed to the City taking the developer role. The Grand Jury has also concluded that the City of Irvine has now assumed the traditional role of oversight. However, this support role must be carefully planned and coordinated to provide sufficient support to the Prime Contractor. The City of Irvine should also be capable of performing its role of providing park operation and maintenance. The Grand Jury also concluded that the windfall IRDA funds needed to be properly allocated by the City Council to the Great Park.

Looking Forward: The Future Plan for Construction and Funding

With the completion of the Current Plan, a major second phase of the development will be completed. However, what has not been addressed is a construction plan supported by funding for the next phase. There has been discussion regarding a library, aviation museum, lake, and amphitheater. The City Council of Irvine has not brought forward an executable plan for these upgrades supported by a viable funding plan. The Grand Jury concluded that a transparent, comprehensive multiyear plan taking the Great Park to completion needs to be developed so that the public can

engage in the process. The City Council of Irvine should take on the leadership role of providing the public the vision and the results in a fiscally responsible manner.

In addition to the completion of the Great Park construction, there is an issue regarding the long-term funding for the operations and maintenance (O&M) of the Great Park. The Settlement Agreement for the IRDA provides the Great Park \$135 million; however, the payments of these funds are sequenced over 12 years. Therefore, in 2028, the City of Irvine will not be able to meet their commitments for O&M without the use of the City's general funds. The Grand Jury concluded that the City Council of Irvine again needs to immediately take the initiative to address this issue with a comprehensive funding plan.

The Grand Jury concluded that a comprehensive reconciliation of funds by the Great Park relative to the City of Irvine's transactions is needed. Special attention should be paid to the IRDA transactions and the associated settlement agreement. The payment of interest from the IRDA to the City of Irvine and the City Council's commitment of the settlement agreement to the Great Park of its \$142 million "windfall" should be confirmed.

Operations and Maintenance

The City of Irvine made the decision to assume the operations and maintenance (O&M) responsibilities for the Great Park. These costs are the yearly recurring costs necessary after the capital investments are completed. According to the 2009-2020 Strategic Plan, the annual expenses in 2020, when the park is fully operational, are projected to be:

Funding for the Great Park O&M in 2020 is projected to be:

This results in a total deficit projection of \$2.5M per year. However, this deficit could be prevented over the next 12 years by the commitment by the City Council of the residual funds from the IRDA Settlement Agreement tax receipts. These funds have not been allocated by the City Council to the Great Park even though the source of the funds was from Great Park assets being given to the IRDA.

Transparency

Public transparency is an integral element of public administration. There are three primary aspects of transparency: disclosure, clarity, and accuracy. It is of paramount importance that the decisions elected bodies make are made publicly and publicly archived. From the onset, the Grand Jury found that the City Council and OCGPC were not transparent with either the process or the relevant information associated with the Great Park to the public.

During the 2005 timeframe, contractors explained to the OCGPC that the estimated costs were to be nearly \$1 billion. Experts later estimated that the original plan would cost \$1.4-1.6 billion. However, this estimate was never revealed. Later estimates by contractors predicted it would cost \$3-5 billion over 25 years to build the entire park (horizontal and vertical). However, none of these estimates were publicly disclosed.

The City of Irvine plunged forward with the Great Park project but there were never definitive budgets, schedules, milestones, or deliverables open for public review. The flow of funding was so confusing that the public would have difficulty discerning what was actually occurring. Contracts were not always definitive as to deliverables and there was excessive use of no-bid contracts that was not publicly disclosed. It was never publicly discussed that even if the costs came in just over \$1 billion, the City would not be able to finance the park according to their financial plan.

FINDINGS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled “Irvine” Great Park: A Legacy of Hubris,” the 2014-2015 Orange County Grand Jury has arrived at 14 principal findings, as follows:

- F.1.** The Irvine City Council originally had a vision of a metropolitan park that would rival Central Park in New York, Golden Gate Park in San Francisco, and Balboa Park in San Diego but neglected to follow standard industry practices in managing such a large project.
- F.2.** From the outset, with the City of Irvine assuming a land developer role, the project was poorly managed and did not follow conventional program management principles. There was excessive political control, influence, and interference over the Great Park project. The City allowed individuals, including some elected officials to make technical decisions without ensuring that these individuals were qualified or experienced to make such decisions. Basically, the City abandoned sound project management principles.

- F.3.** The organizational structure established by the Irvine City Council was such that total control over the project rested with the City Council and the Orange County Great Park Corporation was relegated to an advisory role.
- F.4.** Many California communities, including Mission Viejo, Belmont, Watsonville, and Norwalk have ordinances restricting elected officials from interfering in operational activities under a city manager.
- F.5.** Appropriate transparency over the project was lacking. The City Council and the OCGPC did not publicly reveal the estimated true costs to build the park as originally designed as well as other non-capital expenditures.
- F.6.** There were serious questions about the ability of the City to implement the original design based on the City's available financing and U.S. Navy constraints.
- F.7.** Many of the contracts of the Great Park were open-ended and without defined deliverables, minor oversight, or safeguards. There seemingly was no effective oversight over invoices, contract compliance, or quality control.
- F.8.** There seemed to be over-use of no-bid and sole source contracts without full justification which possibly violates the City's processes and procedures. There are also questions of clarity relative to terms and conditions of current contracts.
- F.9.** Orange County Great Park financial statements indicated that less than 50% of expenses incurred were spent on capital, i.e., on the actual design and construction of the Great Park, which is well outside industry standards. The remaining expenses were on salaries, overhead, and contract services.
- F.10.** The complexity of financial transactions relative to the Great Park made it difficult to understand the flow of funds relative to sources and uses of monies. The lack of clarity on such basic issues as the number of units authorized to be constructed raises concerns about other issues in the contract that are unclear. This was a major flaw in the reporting system.
- F.11.** An inordinate amount of funds were spent on public relations and lobbying, "free" public events, exhibitions, food, and a balloon whose benefits did not justify its costs.
- F.12.** The current plan for the construction of the Great Park will require less funding than the original plan but will still require a high cost of construction and operations and maintenance that will be passed on to home buyers.
- F.13.** There was no explanation by the City Council as to where the tax increment of \$43 million received by the IRDA from 2005-2011 was utilized.
- F.14.** The OCGPC has become a "shell" corporation and serves no intrinsic function as members of the Board of Directors are the same as members of the Irvine City Council.

RECOMMENDATIONS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled "Irvine" Great Park: A Legacy of Hubris," the 2014-2015 Orange County Grand Jury makes the following eight recommendations:

- R.1.** All of the funds related to Great Park financial activity should be presented as a separate section in the City's CAFR to allow for greater transparency (F4; F9).
- R.2.** The City of Irvine should give serious consideration to dissolving the Orange County Great Park Corporation as it serves no intrinsic purpose (F13).
- R.3.** The City of Irvine should create and consider adopting an ordinance similar to that adopted in other cities, such as Mission Viejo⁸, that limits the interference and influence of City Council members with the operational aspects of the city. (F1; F2; F4).
- R.4.** The City of Irvine should develop and publish a new 10-year comprehensive strategic plan for all of the development activities beyond the ALA II plan with time commitments for the Cultural Terrace, including the library, lake, museums, etc. along with all of the funding and expenditure plans (F2, F7, F11).
- R.5.** The City of Irvine should discontinue extravagant expenditures in favor of more cost conscious public events. As an example, the City should consider "grounding" the balloon or severely limiting its use, as this expensive attraction costs over \$1 million per year to operate (F10).
- R.6.** The City should review and ensure compliance with its policies and guidelines regarding contracts and appropriately restricting the use of sole source and no-bid contracts. (F7)
- R.7.** The City of Irvine should create a master document that lays out all of the terms and conditions of the ALA, ARDA, ALA II contracts and alterations to the Master Plan and Land Use Agreements. These need to be consolidated into one document of record which clearly indicates each party's obligations under the contract (F7).
- R.8.** The City of Irvine needs to provide an explanation as to where the tax increment of \$43 million received by the IRDA from 2005-2011 was utilized. (F13).

REQUIRED RESPONSES

The California Penal Code section 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such

comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected official shall comment on the findings and recommendations pertaining to the matters under that elected official’s control within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code section 933.05, subdivisions (a), (b), and (c), provides as follows, the manner in which such comment(s) are to be made:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section 933.05 are required from:

Responses Required:

Irvine City Council – All Findings and Recommendations

:

COMMENDATIONS

The Grand Jury is very appreciative of the cooperation and efforts of the staff of the City of Irvine and the Orange County Great Park Corporation. They could not have been more courteous, professional, and helpful. Appreciation also goes out to the Office of the Orange County District Attorney for their assistance.

ENDNOTES

1. Measure W: County Parks Initiative:

Shall the initiative measure: 1) eliminating planned airport uses at the closed El Toro Marine Corps Air Station (MCAS El Toro) by repealing Measure A, and 2) amending the Orange County General Plan to authorize an urban regional park and a variety of agricultural, material recovery/recycling, recreational, cultural, educational, employment, public and housing land uses at MCAS El Toro, be adopted.”

The intention of the initiative was to cease all activities to transform the former air base into a commercial airport and to “provide Orange County’s three million residents with an opportunity to enjoy a park on par with Golden Gate Park and The Presidio in San Francisco, Griffith Park in Los Angeles, and Balboa Park in San Diego.” Further rationale included: “The park will generate regional and state-wide economic benefits from tourism, education, and the attraction of businesses to the area.” (Orange County, California Measure W. Retrieved August 13, 2014 from <http://airportnoiselaw.org/orangew.html> para H)

2. Bosque: The term *bosque* is from the Spanish meaning “woodlands.” It refers to clumps of trees found along flood plains of stream and river banks in the southwestern United States.

3. The Irvine City Manager stated in 2003:

“The financial plan for the OC GP will fulfill the promise our City made to the people of Orange County when we drafted Measure W nearly two years ago.

“Working in cooperation with the Navy, we have created a sound financial plan for building and maintaining the Great Park without any federal, state, or local taxpayer subsidies.

“Master-planned communities throughout Southern California, including Irvine, maintain high standards and amenities by requiring developers and property buyers to contribute to the construction and maintenance of public facilities.

“Real estate experts who have reviewed the Orange County GP Plan all agree that the sale of the developable property will more than support the \$200 million in development fees. The assessments and special maintenance levies, plus the basic 1% property tax, will not exceed the overall 2% property tax levied on property owners in most master-planned communities.

“The most exciting feature of this plan is the speed in which it allows the GP to be developed.

“We will begin tearing up the runways within days of the completion of the sale of the property. Our children will be playing in the county’s largest Sports Park, and people will be able to enjoy the first phase of the Meadows Park within three

years. Within only five years of the sale of the property, the OCGP will be fully landscaped and will serve all of our county for many generations to come.” (p. 1)

4. According to *Orange County Great Park Planning Report (2003)*: “Other great metropolitan parks have required fifty years or more to develop. By contrast, the Orange County Great Park development strategy—harnessing the power of private capital and the benefit of enlightened public planning—will enable all key elements of the Great Park to be developed within five to seven years of the sale of the property.”
5. The 2005-2006 Grand Jury stated in their report “Orange County Great Park: Whose Park Is It?”: “By merging the operations of the City of Irvine and the GPC, employees of the GPC are now employees of the City of Irvine and everything from job assignments to raises and other factors are at the behest of the City of Irvine. It raises the question, what exactly is the purpose or function of the OCGPC if the City of Irvine collects all park related revenue, hires employees whose duties are related to the park, and pays the other expenses related to the park.” (p. 9)
6. This is not in violation of public law. According to the Health & Safety Code (§33200, sub d). [a]) a city council, in activating the redevelopment agency in its community, is authorized under State law to name itself to members of the redevelopment agency board, as the Irvine City Council did when it adopted Ordinance 99-04 in 1999 activating the Irvine Redevelopment Agency.
7. City of Irvine Contract Award Process: A contract can primarily be awarded in the following three methods.
 - Use of Consultant Team Member
 - Request for Proposal (RFP)/Formal Bidding Process
 - Sole Sourced

The city creates a list of business needs and establishes a list of Consultant Team Members who have been properly vetted. When a need is discovered the responsible manager is to go to the Consultant Team first, next option is to request a RFP from any and all vendors, and last option is sole sourcing.

The following is a summary of the key levels of contract authority and signature levels contained in the Great Park Procurement policies. Authority to sign a contract must be preceded by approval of the contractor, program or expenditure, either through the budget process or through separate action of the Corporation’s Board of Directors. The levels and amounts are consistent with comparable functions in the City of Irvine.

Contract Amount	Contract Authority
\$100,000 or less	Orange County Great Park Managers
>\$100,000 up to \$1,000,000	Chief Executive Officer and Deputy Chief Executive Officer
>\$1,000,000	Chief Executive Officer and Chairman*

*Any contract requiring the Chairman's signature must first be approved by the Board of Directors.

Additional highlights of the revised Orange County Great Park Procurement Policies include:

Purchases or contracts in excess of \$5,000 for supplies, equipment, or construction require three qualified bids or quotes.

Professional services or consultants require a formal proposal process for contracts expected to be greater than \$5,000. In this case, three qualified proposals are also required. Pricing, however, is of secondary consideration to qualifications (as required by applicable State law).

The use of a Consultant Team Program whereby certain professional consultants are pre-qualified through a competitive selection process and have master agreements which extend for a period of up to three years. (Consultant Teams pre-approved by the City are available for use by the Orange County Great Park.)

Sole source—the policies allow for sole source purchase or contract where a competitive bidding or selection process cannot be accomplished. Such situations could occur due to time constraints, proximity, highly specialized knowledge, or unique product. Sole source request, in all cases, must be accompanied by a justification memo to the Chief Executive Officer.

8. The following is an excerpt from the Mission Viejo Municipal Code:

“The city council and its members shall deal with the administrative services of the city only through the city manager, except for the purpose of inquiry, and neither the city council nor any member thereof shall give orders to any subordinate of the city manager. For purposes hereof, “inquiry” means any and all communications short of giving orders, directions, or instruction to any member of the administrative staff. Such members shall provide all information reasonably requested by any councilmember. The city manager shall take his orders and instructions from the city council only when sitting in a duly convened meeting of the city council and no individual councilmember shall give any orders or instructions to the city manager. The city council shall instruct the city manager in matters of policy. Any action, determination or omission of the city manager shall be subject to review by the city council. The city council may not overrule, change or modify any such action, determination or omission except by the affirmative vote of at least three members of the city council.” (Code 1988, § 2.08.070)

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**APPENDIX A:
ORANGE COUNTY GREAT PARK CHRONOLOGY**

1993 July	Department of Defense places MCAS El Toro on the BRAC closure list.
2002, March 5	Orange County voters approve Measure W that creates the Orange County Central Park and Nature Preserve to replace MCAS El Toro.
2002, March 6	The Department of the Navy announces its intention to sell MCAS El Toro on a bid basis.
2003, January 28	Irvine City Council announces in a press release that the Great Park would cost a projected \$353 million to construct.
2003, July 7	The Orange County Great Park is incorporated.
2003, November 12	The Local Agency Formation Commission (LAFCO) approves the City of Irvine’s annexation of the former MCAS El Toro, putting the City of Irvine in control of land use decisions for the entire property.
2003, December 5	The Orange County Great Park Corporation (OCGPC) holds its first public meeting and adopts a resolution that expands the Board of Directors to nine (9) members.
2004, January 14	City of Irvine officially annexes former MCAS El Toro.
2004, September	The Department of the Navy invites bids for MCAS El Toro.
2004, December 16	The OCGPC approves the 2004-2005 business plan with an anticipated budget to build the park at \$401 million.
2005, March 8	Redevelopment funding for the Great Park is authorized by ordinance.
2005, April	The OCGPC inaugurates design contest for the Great Park.
2005, June 23	Based on design submittals and recommendation by a “Design Jury,” seven finalists are selected and each is given \$50,000 to develop and Conceptual Master Design Plan.
2005, July 12	Lennar had the winning bid for MCAS El Toro of \$649.5 million. Lennar contributes 1,347 acres to the City of Irvine, pays \$200 million in developer fees, and pledges an additional \$201 million for joint infrastructure and facilities intended to be funded by a Community Facilities District (CFD) bond sale.
2005, September	Finalists present their design plans during the OCGPC public meetings.
2006, January 23	OCGPC board selects the project designer and architect of the Orange County Great Park.
2006, March 9	OCGPC enters into Agreement for Master Designer Services to develop a Great Park Master Plan for \$372 million. The main purpose of the contract is to develop a conceptual design of the Great Park that would be approved by the OCGPC Board and the Irvine City Council.
2006, March 23	A contractor is selected from among five bidding firms to be the program manager for the Great Park.
2006, October 26	OCGPC Board approves the Preliminary Master Plan in concept.
2007, January 9	Irvine City Council authorizes approximately \$4.1 million in expenditures for design, construction, operations, and insurance for the Great Park balloon.

"Irvine" Great Park: A Legacy of Hubris

2007, January 25	Original plan designer makes proposal to OCGPC Board to continue services for the design development of the entire park, including park schematics, mass grading, and construction documents for the initial park construction.
2007, July 14	The Great Park Balloon opens to the public. Features include parking, lighting, temporary visitor center, construction of the observation balloon, and associated infrastructure and utilities.
2007, July 24	OCGPC Board and Irvine City Council approve a schematic design contract (Contract #5759) for \$27.3 million. The purpose of the contract is to develop construction documents in accordance with the Master Design Plan and to establish reasonable cost estimates for the Great Park features included in the Schematic Design.
2007, September 27	The OCGPC Board adopts the Comprehensive Master Plan. Contractor estimates total cost to build park at \$979.8 million.
2007, December 11	Irvine City Council authorizes \$11.4 million for design and construction of the Balloon Enhancement Project and \$2.5 million for first year operating costs, totaling \$13.9 million. Features include new signage and lighting, parking and site access, night flights, a revised multipurpose 5-acre landscaping, and cleaning and painting an existing hangar that will be used for future events.
2008, January 8	Decision to proceed with the Schematic Design to ultimately develop construction documents for the improvements.
2008, March 25	Balloon Enhancement Project is expanded by Irvine City Council to become the 27.5-acre "Preview Park." Irvine budgets approximately \$6.97 million for construction of the entire Preview Park. Balloon project is considered Phase One.
2008, July	Second phase of Preview Park is completed. This phase consists of a lawn, trees, park furnishings, additional lighting, timeline prototype, shade structures, and a relocated and improved visitor center.
2008, July 11	Program Manager estimates the cost of horizontal construction (not including buildings) to be over \$1.6 billion.
2008, August	The City of Irvine hires an independent public accounting firm to audit contract compliance under the Agreement for Master Designer Services (Contract 1).
2009, January	OCGP Board commissions consulting firm to evaluate the merits and feasibility of a major fundraising effort to generate private funds for selected facilities and programs within the Great Park Master Plan.
2009, February	Schematic design is halted by CEO and states no further work necessary on the design. Staff concludes that the project budget to be approximately \$1.4 billion.
2009, March 19	Contractor presents a 36-month construction plan to develop 500 acres for \$61 million.
2009, April 23	OCGP Board votes to recommend that the Irvine City Council appropriate \$61.2 million for the 500-acre park from development proposal.
2009, May 21	Contractor presents Phase 1 plan of the 500-acre plan and attains an additional \$4.7 million to implement Phase 1.
2009, July	Phase 3 of the Preview Park is completed. Third phase included transplanting mature trees into the lawn area and the Farm and Food Lab.
2009, October	Accounting firm auditing contract compliance under the Agreement for Master

"Irvine" Great Park: A Legacy of Hubris

	Designer Services delivered their report.
2009, October 22	GP CEO submitted a proposal for \$65.5 million to develop 200 acres (Western Sector) and to replace the 500-acre plan. The proposal was approved by the OCGPC Board. This area is adjacent to Park Preview.
2009, November 10	The City of Irvine approves a sole source contract with WRNS Studio, an architectural firm, for \$10.1 million for design and pre-construction services for the Western Sector. Construction design of Western Sector began shortly thereafter.
2009, November 12	Consulting firm delivered its report to the OCGP Board, concluding that it is infeasible to raise enough private funds to construct facilities for the Great Park due to many obstacles.
2010, June 17	A Close Out Agreement between the original designer and the City of Irvine is presented at a joint meeting with OCGPC and Irvine City Council.
2010, August 13	Final Close Out Agreement with the original designer and City of Irvine is executed.
2011, January	Governor Brown proposes statewide elimination of Redevelopment Agencies (RDA) beginning with 2011-2012 budgets.
2011, June 15	California Legislature passes ABX1 26 which eliminates RDAs and sets up Successor Agencies and Oversight Boards to wind down dissolved RDAs.
2011, November	An independent public accounting firm, is engaged by the City of Irvine to review contract compliance of the Schematic Design contract (Contract 2).
2012, June 7	Irvine enters into a contract with USS Cal Builders, Inc. for \$22 million to complete construction of 30 acres of the Western Sector.
2012, June 21	Independent accounting firm delivered Schematic Design Contract Compliance Review to Board and city. The report did not reveal any significant or material findings.
2012, November	City Council election was held resulting in the composition of the council being significantly changed. Four of the at-large members were dismissed.
2013, January	City Council cancelled the park public relations contract.
2013, June 17	The City of Irvine retained Hagen, Streiff, Newton, & Oshiro Accountants, PC (HSNO) for \$240,000 to perform a forensic audit of the planning, development, and construction of the Great Park.
2013, November	The Prime Contractor proposed 688-acre park project to the Irvine City Council.
2014, August	City of Irvine readjusts its Master Plan and Design Review to be in concert with the Prime Contractor proposal.
2014, November	The 5-year Master Plan for 688 acres is approved by the City Council.

APPENDIX B: PROBLEMS WITH FORMER CONTRACTS

The Grand Jury found many inconsistencies and problems in managing contracts involving the Great Park.

An examination of the previous largest contracts revealed that many of them contained no deliverables or milestones. Several were open-ended, had minor oversights, and provided for no true safeguards. It seems that there was never an outside audit of finances or contracts.

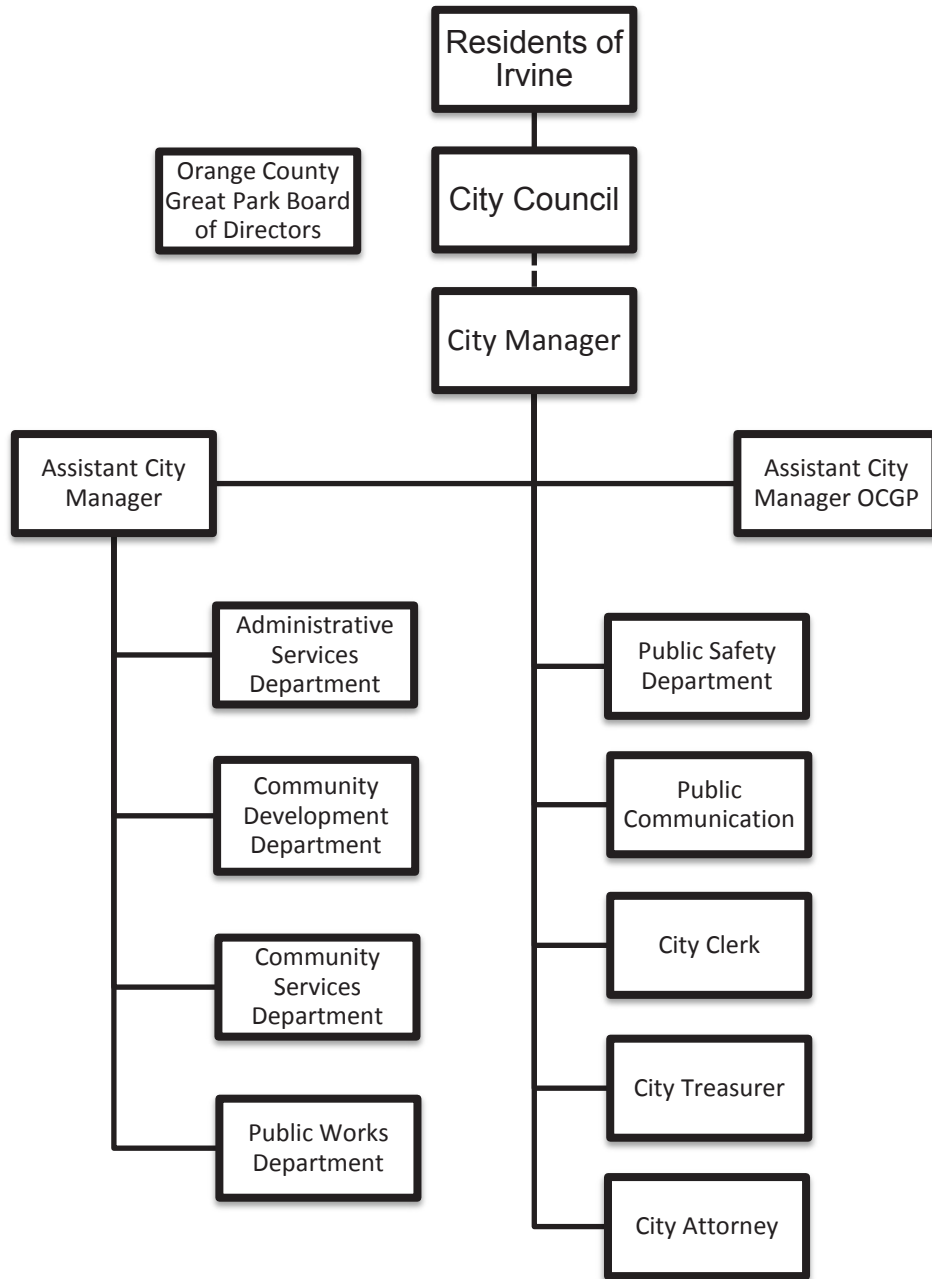
No-Bid Contracts. Very early in the life of the project, the 2005-2006 Grand Jury had recommended that “The Irvine City Council should review current practices involving no-bid contracts to ensure that appropriate business controls are in place to protect the citizens of the City of Irvine” (p. 11). In the response from the City of Irvine, they “wholly” disagreed with this finding. In the City’s response they referenced the current policy on purchasing⁸ which they claimed they were following.

However the practice of no-bid contracts continued over the years. In projects costing over \$100,000, 29 of 83 (35%) were sole source contracts according to records from the Office of the Irvine City Clerk. This seems extraordinarily high; however, the law does not prohibit these contracts if they are for highly specialized services. As an example, the Western Sector was built with sole source contracts, but to management’s credit, the project was completed within 10% of its budget (\$69.9 million actual versus budgeted \$65.5 million).

Change Orders. A review of several contracts revealed an extensive use of change orders. These change orders allowed for additional expenditures. A cursory review determined that over \$15 million was spent on change orders alone.

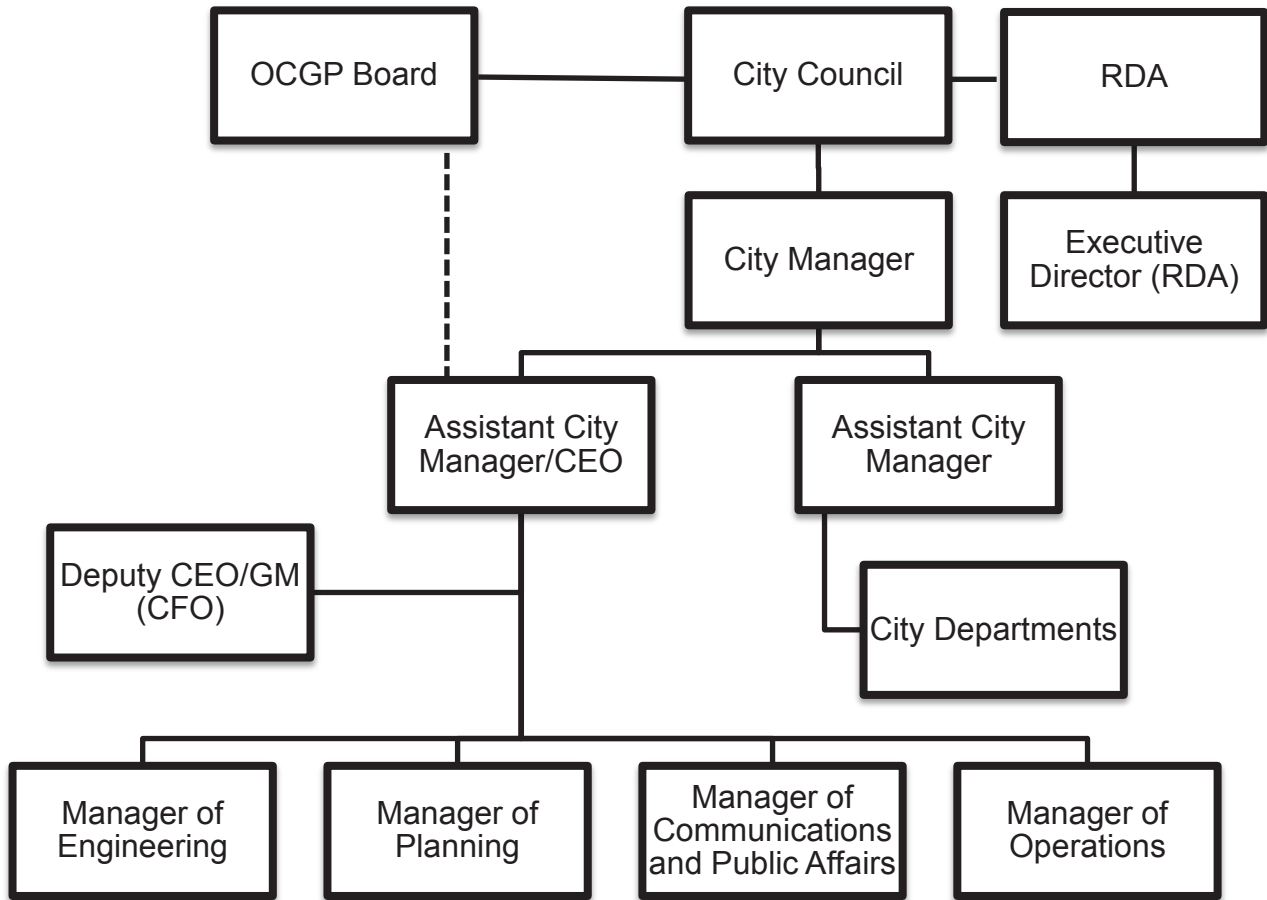
The forensic auditor found strong evidence of a lack of definition of scope in contracts until after the work had begun (HSNO, 2014). Also found was significant confusion concerning scope of work. There were various testimonies in sworn dispositions that one contractor was performing work outside of its scope. Other testimony stated that the same contractor would begin work prior to the contract being approved. The magnitude of change orders indicated a lack of definition of scope of work or poor project management by the City.

**APPENDIX C:
CITY OF IRVINE ORGANIZATION CHART**



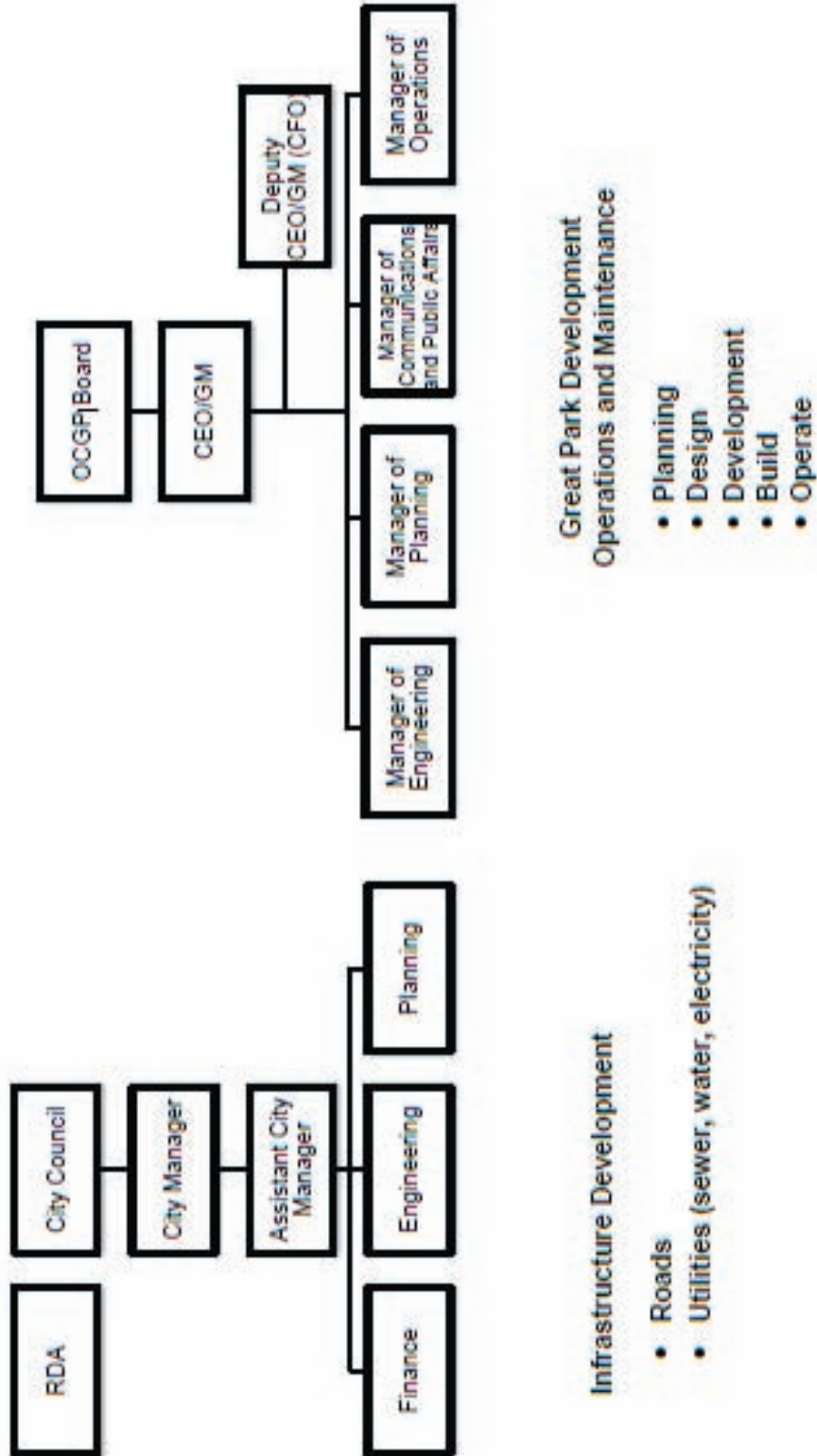
**APPENDIX D:
OCGP ORGANIZATION STRUCTURES**

**Single Organization Staffing Structure
(Approved by Irvine City Council)**



Traditional Structure (Rejected by Irvine City Council)

Appendix A:
Dual Organization Staffing Structure
(Traditional Public/Private Sector Model)



**APPENDIX E:
CITY OF IRVINE COUNCIL RESOLUTION OF APRIL, 2006**

Organization

- The Orange County Great Park Corporation Board of Directors consists of five members of the Irvine City Council and four appointed directors.
- Employees serving the Corporation are employees of the City of Irvine, working within the City's organizational structure, (i.e., as a distinct operating department of the City) and functioning under the general direction and supervision of the City Manager.

Funding

- Funds for the development of the Park are managed by the City of Irvine in a separate city fund.

Operations and Maintenance

- Operation and maintenance of the Park shall be based on a self-sustaining budget.

The Great Park Board of Directors

- May develop policies for presentation for City Council adoption.
- Is responsible for direction and oversight with respect to planning, designing, and constructing the Park.
- Is responsible for ensuring that applicable policy guidelines and design principles are implemented.
- Will oversee construction of the Park and will provide recommendations to the City Council for approval of all contracts and change orders.

The Irvine City Council

- Must initiate and approve all land use modifications.
- Has final authority over all financial matters, including contracts for construction, operation, and maintenance of the Park.
- Is responsible for the management, dispensation, and investment of funds available for the park.

APPENDIX F: MEASURE V

Measure V: Orange County Great Park Fiscal Transparency and Reforms Act:

- Prohibit any money from being spent on the Great Park until approved by the Orange County Great Park board of directors or the City Council at a public meeting.
- Require an annual audit of the Great Park funds by an outside auditing firm and require that it be posted on the city website.
- Establish whistleblower protections for anyone who reports waste, fraud, or abuse of the Great Park funds.
-

**ORANGE COUNTY SHERIFF
MEDICAL INSURANCE:
COUNTY FAILURES IN
NEGOTIATION, DOCUMENTATION,
OVERSIGHT, AND TRANSPARENCY**



GRAND JURY 2014-2015

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EXECUTIVE SUMMARY

Orange County Deputy Sheriffs (Sheriffs) rightfully earn their medical insurance benefit, as do all qualified Orange County (County) employees. Why is the Sheriffs' benefit different from what is offered to non-Sheriff County employees? This can be attributed, in part, to three things: (1) ambiguous language in the agreement between the County and the Sheriffs; (2) a lack of initiative on the part of the County to enforce its understanding of the terms of the agreement; and (3) a lack of transparency that sometimes serves to undermine the collective bargaining process.

In 1990, the County entered into an agreement with the Sheriffs' collective bargaining unit, the Association of Orange County Deputy Sheriffs (AOCDS), that provided that the County would contribute to the cost of medical benefits to qualified AOCDS members, but shifted the responsibility to administer those benefits from the County to the AOCDS. According to the current agreement, the medical benefits provided by AOCDS are required to be "similar," but not equivalent to, what the County provides to non-AOCDS members.

The Grand Jury has determined that the benefits offered by AOCDS might be considered "similar," but the scope of who might benefit from County contributions to the AOCDS Medical Benefits Trust Fund (Trust) is broader for AOCDS members than for the County's non-Sheriff employees. Is this what the County bargained for?

At least twice since 2009, AOCDS has subsidized a portion of its retired members' medical insurance benefits; the County does not subsidize its County retirees' medical insurance benefits. Additionally, a portion of the funds deposited by the County into the Trust are being used to pay for medical insurance for some AOCDS employees, who are not Sheriff or County employees or retirees, but are offered the same medical insurance benefits as qualified active and retired County Sheriff employees.

Why are active AOCDS members allowed to pay so much less (nothing, in some cases) than their County counterparts for their Annual Required Contribution for retirement health care? Allowing this accommodation to continue for the active Sheriffs will certainly result in the County and its non-Sheriff employees having to make up the future, increasingly large, shortfall in retiree medical coverage.

Most of these inconsistencies can be attributed to ambiguous wording in the agreement, poor negotiating, and enforcement of the County's understanding of the terms of the agreement, and County politics. What does "similar" medical benefit mean? Should any of the contributions the County pays into the Trust be used to benefit AOCDS retirees? Should County funds be used to pay for medical benefits for AOCDS employees?

Is the County contributing too much per employee? Are AOCDS members not paying enough?

Additionally, it does not appear as though the County has adequately followed through on addressing issues concerning the AOCDS trust raised by the auditor the County jointly retains with the AOCDS to assess the Trust's finances every year. Finally, has the County's most senior elected officials' influence resulted in changes that materially affect the terms of the agreement that took almost two years for AOCDS and County negotiators to finalize?

The current Memorandum of Understanding expires in June 2016. Between now and then, the County and the Board of Supervisors have a lot of work to do.

BACKGROUND

(See Appendix 1 for a glossary of terms used in this report.)

Orange County (County) is currently obligated to provide medical insurance benefits to its qualified current (active) and retired employees and their families. Since January 1, 1990, the County has entered into a series of memoranda of understanding with the AOCDS, the Sheriff employees' bargaining unit, whereby AOCDS would administer the medical benefits program for its members. The current Memorandum of Understanding (MOU) (County of Orange, 2014a) was entered into for the period starting in October 2012 and will be in force until June 30, 2016.

Sections 3 through 8 of Article XII of the 2012-2016 MOU, titled "On the Job Injuries, Workers' Compensation and Medical Insurance," include the terms of the Sheriffs' medical insurance agreement. Specifically, the terms require that the County pay specified amounts monthly into an AOCDS Medical Insurance Trust Fund (Trust). That trust fund was set up and is managed by the AOCDS to pay Blue Cross and Kaiser medical insurance premiums for medical benefits provided by those two medical insurance providers to qualified AOCDS active and retired employees and their families. The MOU terms also require active and retired employees to make contributions to pay a portion of their medical coverage.

Medical Insurance Coverage

The MOU contains provisions that loosely define the responsibilities, obligations, and limitations of the County and AOCDS regarding payment for medical insurance coverage for qualified active and retired Sheriff employees. The AOCDS, through its Trust, is required to provide "medical benefits *similar* to those offered by the County" (MOU Art. XII, Section 4.A.). Once the County makes its monthly payment into the AOCDS Trust, the County effectively loses visibility and traceability of those funds.

County Medical Insurance Contributions

The MOU includes the monthly amount the County has to pay into the AOCDS Trust. This amount increased from \$745 per month in 2010 to \$1,174 (commencing January 1, 2016) for each qualified Sheriff's employee. In addition, for qualified retired Sheriff employees, the County is required to make monthly Retiree Medical Grant payments into the AOCDS Trust.

Retiree Medical Plan Grants

Since August 1993, the County has been required to administer a Retiree Medical Plan for employees, to include a Retiree Medical Grant. Eligible retirees receive Grant funds monthly that are applied towards the cost of retiree and dependent coverage in the AOCDS medical insurance plan. The specific Grant amounts are determined by multiplying \$10 by the number of full years of credited service (to a maximum of 25 years), or a maximum of \$250 per month. The Grant amount paid may not exceed the actual cost of the retiree's medical insurance premiums.

Sheriff Employee Medical Insurance Contributions

Qualified active Sheriff employees are required to make monthly payments into the AOCDS Trust. The monthly payment is the difference between the monthly cost of the Sheriff's medical insurance premium and the monthly amount paid by the County into the AOCDS Trust for each Sheriff employee.

Retired Sheriff employees must also make monthly payments into the AOCDS Trust. Those payments are the difference between the monthly cost of the retired Sheriff's medical insurance premium and the monthly Retiree Medical Grant paid by the County into the AOCDS Trust. In addition, the MOU requires that the medical insurance premiums for qualified retired Sheriff employees must be at least 10% higher than the premiums for comparable medical insurance coverage for qualified active Sheriff employees.

Medical Insurance Reserves

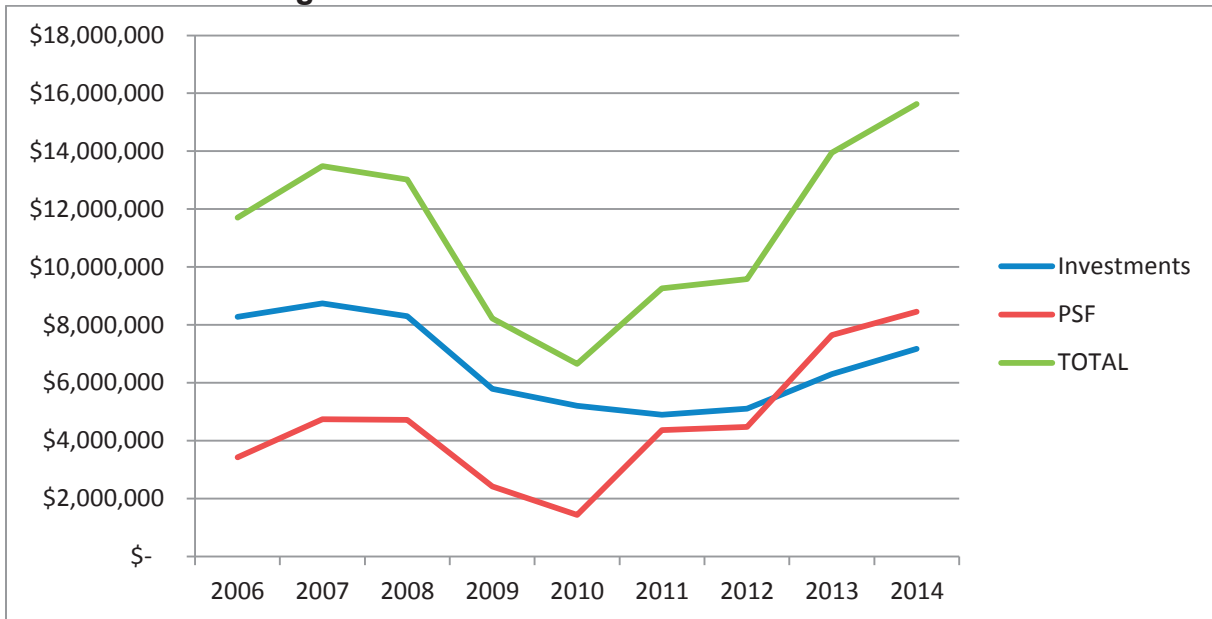
Any County contributions paid into the Trust that are not actually used to pay for medical insurance premiums are kept in the Trust as "reserve." The reserve is maintained in order to make sure AOCDS has funds available to provide medical benefits coverage in the event of unexpected significant medical claims losses.

The general reserve fund "investments" are presented in the annual Trust financial reports as "mutual funds" and "money market funds." The reported total investments, as of June 30, 2014, were valued at \$7.2 million, an increase of \$871,250 or up 13.8% from the 2013-reported amount (Lindquist LLP, 2013a, 2014a).

A second component of the AOCDS Trust "reserve" is the Blue Cross Premium Stabilization Fund (PSF). These are excess funds Blue Cross sets aside to be used for premium payments in the event of unexpected significant medical claims losses. The 2014-reported total for the PSF was \$8.4 million, an increase of \$804,975 or up 10.5% from the 2013-reported amount (Lindquist LLP, 2013a, 2014a).

As of June 30, 2014, the investments and PSF Trust reserves totaled \$15.6 million, a one-year 12% increase of \$1.7 million. In fact, since 2006, there have been only three years that have not shown an increase in total Trust reserves. The MOU neither establishes a ceiling for reserves nor specifically limits how the funds in the reserve can be used. The MOU only requires that a reserve study be completed once during the term of the agreement. Figure 1 displays the yearly changes in the Trust reserves from 2006 through 2014.

Figure 1: AOCDS Medical Insurance Trust Reserves



(Miller, 2007 and Lindquist LLP, 2008a, 2009, 2010a, 2011a, 2012a, 2013a, 2014a)

There were two occasions (2009 and 2010) when it was disclosed in the audited financial statements that the AOCDS Trust trustees determined that the Trust was “over-funded.” After accounting for County-paid retiree medical insurance grants, AOCDS decided to subsidize a “small portion” of the cost of the benefits for qualified retiree employees, but not active Sheriff employees (Lindquist LLP, 2009, 2010a, b). The reports do not mention the funding source; however, the Grand Jury believes that those retiree subsidies came from the AOCDS Trust’s reserve that contained County contributions the County claims it intended to be used only for active Sheriff employees.

County Management of the MOU

The MOU requires that the AOCDS operate its Trust’s programs in compliance with applicable State and/or federal laws and regulations. It also mandates that the Trustees provide an annual written verification of AOCDS’s compliance with those laws and regulations, as confirmed by a certified, independent audit of the Trust.

Annual Financial Report

An independent CPA is jointly retained by the County and the AOCDS to perform an annual financial audit and to prepare an annual financial report of the Trust (County of Orange, 2014b). The annual report must include an opinion on whether the AOCDS’ Trust’s financial statements are, among other things, in conformity with generally accepted accounting principles. The MOU and Scope of Work (SOW) detail the criteria by which the CPA is to be held accountable by the County and the AOCDS. The major areas that must be addressed and included in the annual audit report are as follows:

- Obtain knowledge of AOCDS’ organizational environment, including funding sources, contractual and legal requirements, economic

considerations, administrative and operating characteristics, and internal controls

- Perform substantive tests of financial statement balances to determine the accuracy of those balances
- Perform substantive tests of transactions to determine whether the transactions are valid and valued and coded correctly
- CPA's opinion on the financial statements
- Identify other significant matters, which came to the CPA's attention, such as material weaknesses in design or operation of internal controls, illegal acts, or significant fraud risks.

Reserves and Administrative Fees & Expenditures Reports

Section 4.C. of the MOU states that “[t]he County shall participate and be involved in a study commissioned by AOCDS to determine the appropriate level of reserves for the Medical Insurance Trust.” A reserve study was completed in April 2009 for a prior MOU (Rael, 2009), but the AOCDS and the County have not yet performed the reserve study required by the current MOU to be completed by June 30, 2016.

The current MOU also requires the AOCDS to provide a report, prepared by a CPA firm, outlining the methods used to calculate the amounts of administrative fees and expenditures paid to AOCDS. This report, titled, “Independent Accountants’ Report on Applying Agreed Upon Procedures” was completed by Miller, Kaplan, Arase & Co., LLP on August 11, 2008, and again by the same firm on January 18, 2012 (Miller, 2008, 2012). No administrative fee or expenditure irregularities were noted by the auditor.

Joint Audit of the Medical Insurance Trust

The County and the AOCDS are required by the MOU to complete an annual, independent audit of the Trust. The jointly retained CPA firm’s annual audit report must include, but is not limited to, the following elements:

- Summary of medical benefit plan highlights
- Monthly premiums for active and retired Sheriff employees, including a verification that retiree premiums are no less than 10% higher than active employee premiums
- Summary of enrollment by active and retiree Sheriff employees
- Method for setting retiree contributions, ensuring that retiree contributions are based on the difference between their premium and their Retiree Medical Grant amount
- Review of health plan renewal or contract documents
- Review and understanding of the investment options and balances of the Trust
- Explanation of how the unfunded liability is calculated
- Review of actuarial valuations of the Trust
- Review of the cash flow analysis of the mutual fund investments
- Analysis of how the amount of overhead (excluding administrative fees) is determined

Specific limitations included in the SOW with the independent auditor (Lindquist LLP) preclude Lindquist from doing the following:

- Determining the appropriate level of Trust reserves
- Auditing the administrative fee paid by the Trust to AOCDS

These two items were not included in the SOW because they are addressed in their own sections of the MOU, Sections 4.C and D, respectively (County of Orange, 2014b).

MOU Negotiation and Adoption/Approval Process

Negotiations between the County and the bargaining units who represent large numbers of County employees have often been a source of confusion and frustration on both sides of the table, not to mention County residents. The current MOU for Sheriff employees covers the period from October 2012 through June 2016, but was not formally adopted by the Board of Supervisors until July 2014. The MOU includes sections explaining that the Trust is administered by the AOCDS and specifies County contributions and vaguely describes allowable uses of County contributed funds.

The negotiation process was prolonged and contentious, ultimately resulting in approval by a 3-2 vote of the Board of Supervisors. Major contributing factors to the differences between the County and the AOCDS have been what can be characterized as a healthy measure of mistrust between the parties and a lack of transparency to the public of factors affecting the outcome of the collective bargaining process. These concerns were also expressed by the public and were exacerbated not only by the lack of transparency associated with the negotiation process, but also the insufficient time allowed for the public to review and comment on the proposed MOU before it was approved by the Board of Supervisors.

REASON FOR THE STUDY

The Grand Jury has received several requests to investigate various aspects of the management of medical insurance benefits being provided to active and retired County Sheriff employees. These requests, which are addressed in this report, can generally be divided into three areas of interest:

- Whether the County intended, as a matter of policy, to restrict the use of its monthly contributions to the AOCDS Trust to benefit active Sheriff employees only, and if the language in the MOU is clear enough to come to this conclusion
- Whether the County has adequately followed through on monitoring and enforcing the implementation and operation of the Trust to ensure compliance with the MOU
- Whether the negotiations process between the County and the AOCDS was adequately transparent to the public, allowed sufficient time for review and comment before the MOU was adopted, and was affected by political considerations.

Although the Grand Jury has met with representatives of AOCDS to gather information for the preparation of this report, the Grand Jury does not have jurisdiction over AOCDS because it is a private, non-profit organization. The Grand Jury, therefore, focused its investigation on the actions and responsibilities of the County with respect to negotiating, interpreting, and monitoring the AOCDS MOU.

METHODOLOGY

Information for this report was developed through the following efforts by the Grand Jury:

- Reviewed the sections of the 2012-2016 MOU between the County and the AOCDS with special attention to Article XII, addressing medical insurance
- Reviewed the SOW of the Agreement for Professional Services between the County and the AOCDS and Lindquist LLP (their jointly retained audit firm) regarding the AOCDS Medical Benefits Trust
- Reviewed the Audited Financial Statements, Independent Accountants' Reports on Applying Agreed-Upon Procedures, and Auditor Management letters identifying Significant Deficiencies and offering Comments and Recommendations
- Reviewed the "Appropriate Level of Reserves" report prepared by Rael Letson, Consultants and Actuaries
- Reviewed a number of relevant published articles and blogs
- Interviewed current and former elected Orange County officials and their staff
- Interviewed Orange County senior management and their staff
- Interviewed AOCDS senior management
- Interviewed a member of executive management with the Lindquist LLP, the entity responsible for conducting the Trust's annual audits
- Interviewed a prominent attorney who is an expert in labor law

INVESTIGATION AND ANALYSIS

Medical Insurance Coverage

Orange County, like many other government entities and businesses across the country, changed its approach to medical insurance coverage from what is described as a "defined benefits program" to a "defined contribution program." With this change, employers were no longer required to pay the entire cost for medical insurance for their employees and retirees. Depending on final agreements between employers and employee bargaining units, employers pay either a prescribed portion of employee medical premiums or nothing at all.

Orange County opted to share the cost of medical insurance with its employees. The County provides various insurance coverage options for its employees and retirees to consider. The options (e.g., preferred provider organization-PPO, point of service-POS, and health maintenance organization-HMO) have varying amounts of coverage

and cost for the individuals and families. Each coverage option costs a specific amount for the employee or retiree who would choose from among the options and commit to sharing the cost of the medical insurance.

In April 2007, the County, in order to lower costs, changed the medical insurance benefits it would provide to active employees. The County pays a fixed share of the premium and the employee is responsible for paying the balance.

AOCDS Agreement to Manage Medical Insurance for its Members

In January 1990, the AOCDS and the County agreed to an arrangement whereby AOCDS would assume responsibility to manage medical insurance plans for its active and retired Sheriff members. The County agreed to pay AOCDS a monthly amount that would be used by the Trust to pay for medical insurance premiums for AOCDS' active and retired, non-management (Peace Officer and Supervising Peace Officer), Sheriff members. Eventually, the Sheriff Department's management (i.e., Lieutenants and Captains – members of the Association of County Law Enforcement Managers) bargaining unit successfully negotiated with the County to allow Sheriff management personnel to be included in the AOCDS medical insurance program.

AOCDS explained the wisdom in preferring to administer the medical benefits program because their active and retired membership is unique among all County employees. They claimed that because many Sheriff employees are able to retire as early as 50 years of age, it is critically important to AOCDS to be able to provide affordable health care during the members' retirement years preceding age 65, at which point Medicare coverage starts. In any case, AOCDS was convinced they could provide more cost-effective and comprehensive coverage than the County for all of their members, active and retired.

Active vs. Retiree Medical Insurance Question

Some assert that AOCDS was also motivated to assume responsibility for the medical insurance program so AOCDS could assist their retirees in covering a portion of the cost of their medical insurance. The County claims that it is inappropriate for AOCDS to be permitted to expand medical insurance coverage for AOCDS retirees that is beyond what other County retirees receive.

One might wonder why the County would be concerned about this, since by entering into the MOU with AOCDS the County had effectively abdicated its role in directly providing medical insurance coverage to active and retired Sheriff employees. The County agreed to an MOU that is ambiguous in some areas of concern to the County, such as whether County contributions might be used to assist retirees. The MOU stipulates that AOCDS be required to provide its membership medical coverage "similar" to that provided by the county (Section 4.A.). "Similar" cannot reasonably be interpreted to mean "identical" or to preclude the coverage offered by AOCDS from being more or less than what is generally offered by the County to its employees.

According to the MOU, as long as retiree health plan premiums are 10% higher than active AOCDS employees' health care premiums (Section 8.F.2.), why should

AOCDS be criticized for utilizing the contributions it receives from the County to provide its active and retired membership medical insurance coverage options that can be considered “similar” to County coverage?

Is There a Limitation on How County Contributions Can Be Used?

The Grand Jury could not find a single instance where the MOU specifically restricts AOCDS from utilizing the County’s “medical insurance contribution” funds to benefit its membership generally. In fact, Section 4.B.2. states that “(i)nsurance coverages provided through the trust fund with monies contributed by the County *shall be made available* by AOCDS to all employees in the representation unit and retirees of the representation unit *on an equal basis* regardless of membership status.” If anything, this MOU provision could easily be understood to require that AOCDS provide “equal” coverage to its active and retiree membership.

MOU Language

Section 3.A. of the MOU prescribes the amount of the monthly contributions the County will provide to AOCDS. Each of the provisions, allowing for progressive annual increases (Section 3.A.1. - 6.) states that “the County shall contribute \$xxx *per month for each* full-time enrolled regular, limited-term, and probationary employee on paid status in these units” (i.e., active employee) with certain exceptions that do not make a distinction between these “active” and “retired” employees.

County representatives assert that it was their intent that Section 3.A. prescribes a monthly contribution amount that should be used only to benefit active employees. Others have interpreted the words in Section 3.A. to be the means by which the County is required to calculate the monthly contributions the County is obligated to pay to the Trust. After reviewing the terms of the MOU, the Grand Jury does not interpret Section 3.A. as limiting the use of the monthly contribution to be for the benefit of active employees only.

On the other hand, the MOU (Section 4.E.4.) requires that the annual audit describe the Trust’s “(m)ethod for setting retiree contributions (e.g., confirm contributions based on difference between premium and grant amount).” The use of the abbreviation “e.g.”, meaning “for example”, rather than “i.e.”, meaning “that is”, can be interpreted to mean that the auditor is only required to describe the method for setting retiree contributions, and not necessarily support a requirement that the retiree premiums can only be paid from retiree grant funds and retiree contributions. The Grand Jury concludes that if the County had truly intended that monthly contributions only be used to benefit active AOCDS members, it should have negotiated for language in the MOU that actually reflected that intent.

Subsidies for Retired AOCDS Members Were Allowed

According to the Trust’s audited financial statements for 2009 and 2010 (Lindquist LLP, 2009, 2010a, b), it appears that funds the County claims it intended for active employees were used to subsidize retiree premium costs. The Notes sections for both reports clearly revealed that the Trustees had determined that the Trust was “over-funded” and, therefore, found it feasible to defray some of the increased cost of retiree medical benefits after accounting for Retiree Medical Insurance Grants. Each year, the

Trustees decided they would subsidize a “small portion” of their retiree member benefits for a one-year-period.

If the County had been concerned about whether County contributions were being used to subsidize retiree medical insurance premiums, this would certainly have been the time to challenge the practice. The County has had since 2009 to try to get this sorted out. The Grand Jury is unaware of any effort made by the County to effectively challenge the AOCDS Trust subsidy for retirees, seek a refund, or have the practice discontinued.

County executives who are responsible for developing and sustaining County public policy should decide whether it is appropriate for County funds, intended to be used for employee medical insurance coverage, to be applied inconsistently to both its active and retired employees. If the County disagrees with how County contributions are being utilized, it should both ensure that any future MOU clearly explain its intent and be specific as to any limitations on how County contributions might be used.

County Management of the MOU

The County is obligated to monitor AOCDS’ implementation of the MOU so the County can be assured that the Trust is conforming to the provisions that were negotiated. That can only be done if there are adequate County controls in place, the County is assertive in its approach, and the County aggressively pursues solutions to any unresolved issues. Audit reports are one source of information the County can use to identify potential issues and shortcomings.

Jointly Retained Independent Auditor

Section 4.F. of the MOU, requires the County and AOCDS to jointly retain an independent licensed CPA firm to complete an annual independent audit of the AOCDS Trust. This joint retention arrangement, by its nature, presents challenges to both the County and AOCDS. Although there is a requirement to allow both parties equal access to any data used by the auditor in completing the report, the County is at a distinct disadvantage. Virtually all of the documents and data that might be needed by the auditor are owned and controlled by AOCDS. Examples include:

- Contracts between AOCDS and the medical insurance providers it uses
- Medical history records of AOCDS membership that would be used to prepare actuarial studies to be used in setting premiums and reserves, and
- Documents accurately tracking the monthly County contributions to the Trust, enabling the County to determine how those funds were actually used.

Inexplicably, the County agreed to have a provision included in the auditor’s SOW that limits the auditor’s access to AOCDS Trust meetings prior to and during the audit. According to the MOU, the auditors may only have access “as deemed necessary by the Board of Trustees.” It is unclear to the Grand Jury why the County would agree to allow the organization that is being audited, at its sole discretion, to deny the auditor access to Trust meetings. If the auditor believes it is necessary to have access to Trust Board meetings, the auditor should be empowered to demand and obtain that access.

Auditor Selection Process

The MOU requires AOCDS to choose three qualified and independent CPA firms to be considered for use by the Trust in performing the Trust's annual audit. The County is then expected to choose from among those three candidate firms which firm will actually be jointly retained to perform the annual audit.

The Grand Jury was told that among the three qualified and independent candidate firms nominated by AOCDS, only one was actually interested in doing the work. If this information were accurate, then this would have effectively defeated the purpose of the prescribed nomination process, and resulted in the County having to select the only firm that was actually interested in performing the annual audit. If this did occur, then once the County became aware that only one of the three AOCDS nominated firms would take the work, the County should have demanded that AOCDS repeat their process and select three qualified firms that would firmly commit to taking the work, if offered.

Auditor Significant Deficiencies, Comments, & Recommendations

From time to time, the auditor will include Management Letters in its annual audit. These letters identify "opportunities for strengthening internal controls and operating efficiency." Those "opportunities" are further categorized as being "significant deficiencies" or "material weaknesses." A "significant deficiency" is explained in the audit reports as:

a control deficiency or combination of control deficiencies, that adversely affects the entity's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the entity's financial statements that is more than inconsequential will not be prevented or detected by the entity's internal control (Lindquist LLP, 2008b).

Significant Deficiencies

A relevant "significant deficiency" identified by the auditors was the AOCDS not having developed and documented an anti-fraud program (Lindquist LLP, 2008b) ¹. The audit report outlined, in detail, what such a program (not merely a policy) should contain. The Grand Jury could find no evidence that such a comprehensive program was ever developed or implemented.

Comments, Recommendations & Notes

Various annual audit reports contained notes regarding the following additional deficiencies:

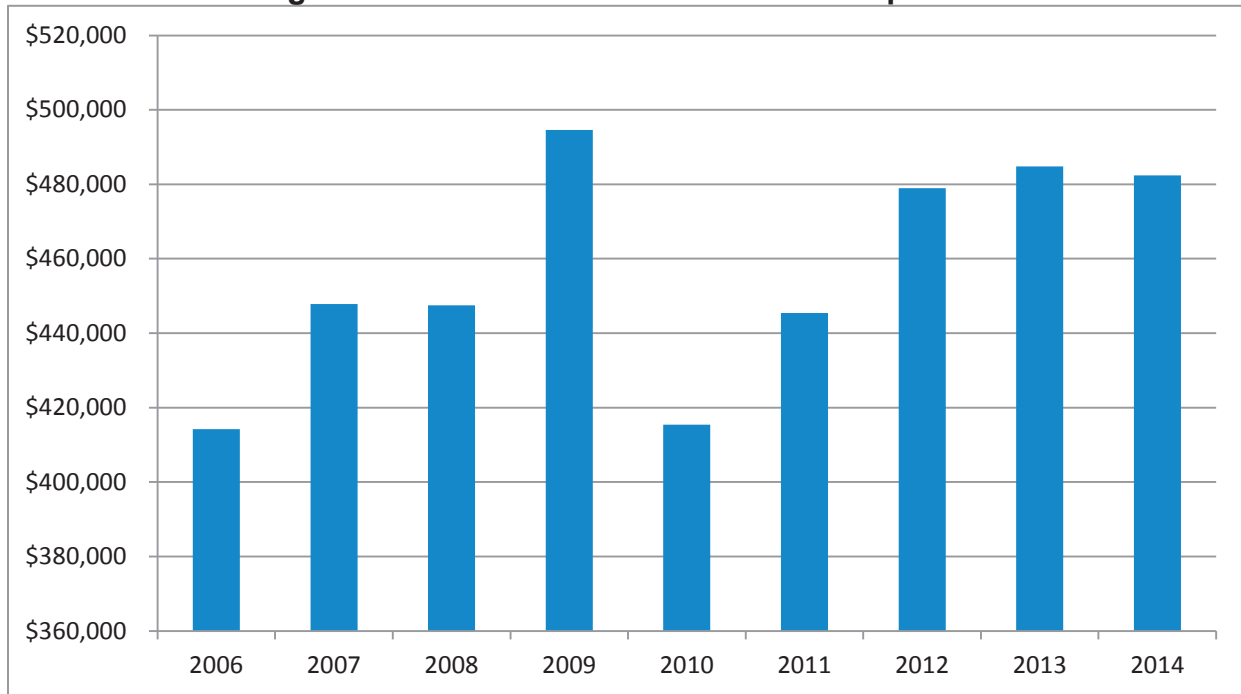
- The auditor clearly reported that AOCDS had subsidized retirees' premiums in 2009 and 2010 (Lindquist LLP, 2009, 2010a, b).
- The auditor recommended that the Trust adopt and implement accounting policies and procedure manuals (Lindquist LLP, 2008b, 2011d, 2012d, 2013d). Having these policies and procedures in place would ensure consistency in accounting practices and continued compliance with all applicable accounting rules and regulations².
- The Trust's accounting records and practices were found to be deficient several times (Lindquist LLP, 2011c, 2012c, 2013c, 2015a)
- The auditors also recommended that the Trust adopt and implement a disaster recovery plan (Lindquist LLP 2008b, 2015b). This plan would ensure the Trust would not lose important data and information in the event of a business interruption³.
- The Trust, in 2012, was found to have understated PSF funds in the audited financials by more than \$1 million. Auditors found the error that had to be corrected in the 2013 financial statements (Lindquist LLP, 2013a).
- The auditor discovered that some retirees were not paying at least 10% more in premiums than active employees (Lindquist LLP, 2014b).
- A portion of the funds deposited by the County into the Trust are being used to pay for medical insurance for some AOCDS employees, who are not Sheriff or County employees or retirees, are offered the same medical insurance benefits as qualified active and retired County Sheriff employees.

(Lindquist LLP, 2014a).

MOU Required Studies

The MOU requires that two additional reports be completed separate from the annual audits during the term of the MOU. The first report outlines the methods used in calculating the amounts of administrative fees and expenditures paid to AOCDS. The Trust's incurred administrative expenses as reported in recent annual financial statements are presented in Figure 2 below. The second report is a study to be done to determine the appropriate level of reserves for the Trust.

Figure 2: AOCDS Trust Administrative Expenses



(Miller, 2007 and Lindquist LLP, 2008a, 2009, 2010a, 2011a, 2012a, 2013a, 2014a)

Section 4.C. of the MOU requires the County to “participate and be involved in a study commissioned by AOCDS to determine the appropriate level of reserves” for the Trust. Unlike the requirement in Section 4.D. to prepare a report outlining the “methods used to calculate the amounts of administrative fees and expenditures paid to AOCDS” by October 1, 2011, there is no deadline for a Trust Reserve report to be completed. The Grand Jury found that, as of the writing of this Grand Jury report, the 2012-2016 MOU Trust reserve study had not yet been completed.

AOCDS Trust Reserve – How Much Is Enough?

The Grand Jury reviewed the recent history of the AOCDS Trust reserves by studying the Trust’s annual audited financial statements (2007 – 2014) prepared by CPA firms jointly retained by the County and AOCDS. The two primary categories that comprise the Trust reserves are “Investments,” consisting of mutual funds and money market investments, and funds in the “Other Assets” category of the financials referred to as the “Blue Cross Premium Stabilization Fund.”

The total of these two categories of assets (Investments and PSF) represent the “reserve” funds available to the Trust. They are meant to serve as a hedge against unfavorable claim fluctuations and to absorb unusually high individual claims that may emerge from time to time.

County Monthly Contributions

It appears as though funds in the Investment category are funds derived from monthly County contributions and contributions paid by active and retired participants that are not spent on payment for premiums. The PSF is created by an agreement

between AOCDS and Blue Cross. It is believed but not confirmed, because the Grand Jury did not have access to the Blue Cross-AOCDS agreement, that the PSF is comprised of funds paid to Blue Cross for health care coverage that are not yet spent on premiums or payouts. The PSF is meant to serve as a reserve for Blue Cross coverage.

The MOU (Section 3.A.1. to 6.) requires the County to make monthly “contributions” to the Trust for each covered employee. These amounts increase over time from \$745 per month through the end of December 2010, to \$1,174 per month as of January 1, 2016. That represents a 57.6% increase over a seven-year period.

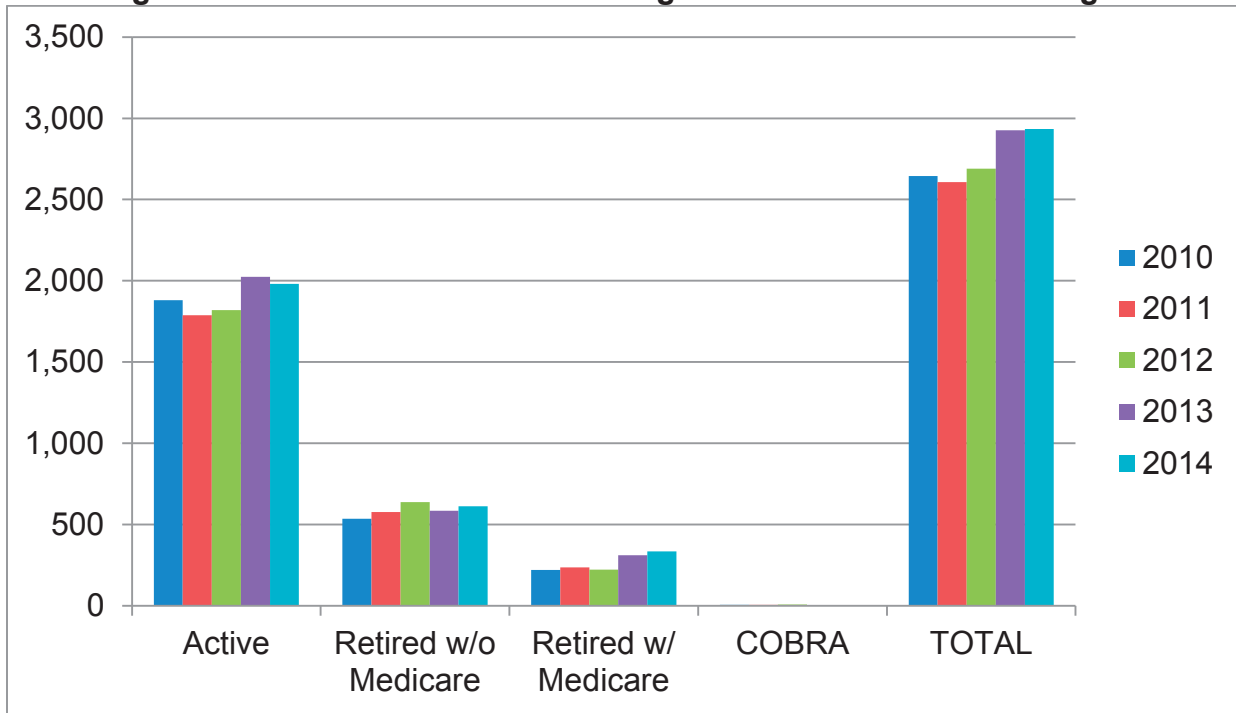
Size of the Reserve

How large should the Trust’s reserve be? How many months of contributions would be appropriate to ensure the Trust will have adequate funds available to cover the risks and premium fluctuations associated with AOCDS’ active and retired membership?

As of June 30, 2014, the AOCDS Trust reserves were reported in the annual audit to be more than \$15.6 million. Investments amounted to \$7.2 million and the funds in the PSF totaled \$8.4 million.

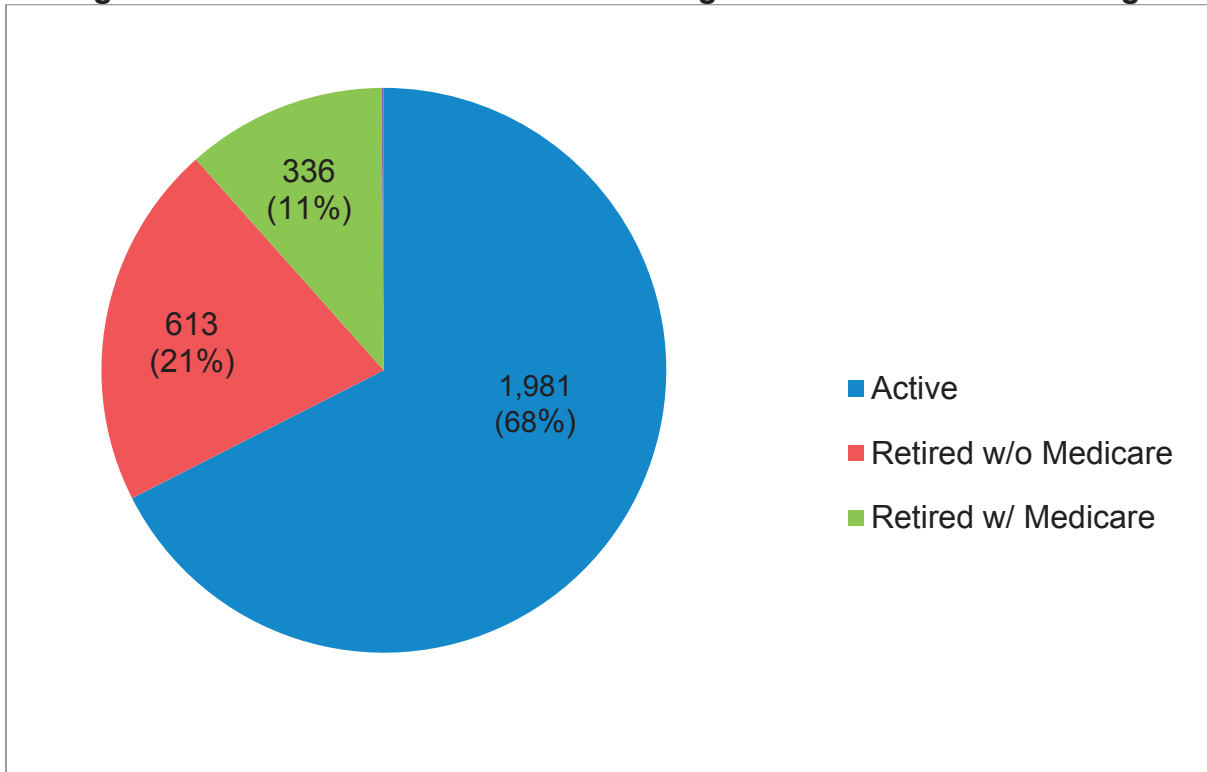
County monthly contributions to the Trust for each active Sheriff employee, as of January 2015, amount to \$1,031. The number of active Sheriff employees presented in the latest audited financial statements (June 30, 2014) was 1,981. This amounts to a total County contribution to the Trust of \$2.04 million per month or \$24.5 million per year (see Figures 3 and 4). The \$15.6 million in the AOCDS Trust reserve, as of June 30, 2014, represents 7.6 months of County contributions to the Trust. Is this adequate? Is it overfunded?

Figure 3: AOCDS Enrollees Receiving Medical Insurance Coverage



(Lindquist LLP, 2010b, 2011b, 2012b, 2013b, 2014b)

Figure 4: 2014 AOCDS Enrollees Receiving Medical Insurance Coverage



(Lindquist LLP, 2014b)

2009 Reserve Study

As of the writing of this Grand Jury report, the reserve study, used to determine the appropriate level of reserves for the current MOU (Section 4.C.), had not yet been completed. The Grand Jury was, however, able to review the “Appropriate Level of Trust Reserves” memorandum prepared for the Trust for a prior MOU between the County and AOCDS (Rael Letson Consultants and Actuaries, 2009).

Areas of Uncertainty

The April 2009 report was prepared by Rael Letson Consultants and Actuaries (Rael Letson) at a time when world, domestic, and local economic conditions were in recession. The report summarized areas of uncertainty they used in making its assessment. Some of those areas included:

- The economic situation in Southern California – “When the economy worsens, people tend to use their benefits more.”
- The worldwide economic situation – “...has resulted in the Trust experiencing major unrealized and realized losses in investments.”
- The County’s bankruptcy – “If that (the bankruptcy) were to happen again, the County’s contributions to the Trust may be reduced or stop.”
- If the Trust decides to increase the subsidy for retiree benefits – “Currently, the Trust subsidizes a portion of the premium rates above the grant money paid by the County which reduces the amount of Retirees self-payments. If the Trust implements a premium assistance plan for survivors of deceased deputies it will require even more money.”
- If the Trust decides to add any new benefit plans (e.g., dental, vision, life) or enhances current benefits.

The areas of uncertainty that AOCDS cannot control (i.e., Southern California economy, the worldwide economic situation, and the County’s long-ago bankruptcy) are no longer as relevant as they might have been in 2009. In fact, the County has recently used this reasoning to justify its demand that a new reserve study be performed as soon as possible. The Grand Jury is unaware whether AOCDS has agreed to the timing to perform such a reserve study.

The remaining areas of uncertainty (i.e., retiree subsidies, survivor benefits, and new benefit plans) are all subject to negotiation between the County and AOCDS. Future MOUs should clearly articulate and resolve any details that have been the subject of disagreement between the County and AOCDS.

2009 Recommended Reserve

In early 2009, Rael Letson projected the Trust’s assets would be in a negative position by 2012. Obviously, with more than \$15 million in the reserve, that did not happen. Because of several factors, including an improved economy and increased County contributions, Trust reserves that amounted to \$9.6 million in June 2012 have steadily increased ever since.

What is an Appropriate Reserve Amount in 2015?

Rael Letson, when confronted with all of the areas of uncertainty it identified, and with concerns that “the Trust is looking into the face of declining reserves as a result of accelerating deficits”, recommended that “measures be taken to maintain a minimum of four months of reserves at all times.” The Trust’s current reserve (\$15.6 million) represents almost 8 months of premiums, almost twice the minimum recommended by Rael Letson in 2009, when economic conditions in the County were much worse.

The Reserve Study for the current MOU does not have to be completed by any specific date, but should be expected to be completed by the end of the term of the MOU, June 30, 2016. As pointed out earlier, the County has asked that a new reserve study be performed as soon as possible. The Grand Jury thinks that perhaps the County, in its next MOU, should insist on a deadline for completion of the reserve study with the additional ability to require more reserve studies, if necessary.

What Happens to the Reserve if it is Found to be Overfunded?

Nothing in the MOU addresses what should be considered an appropriate reserve amount other than to require that a reserve study be done. The MOU also does not discuss what should be done to adjust the reserve if it is determined to be too large or too small. If it is determined to be too large, the parties might consider, if it is allowable, providing for what is called a “premium holiday” where monthly County, active, and retiree contributions could be suspended for a period of time. The Trust reserve would be drawn down to an agreed upon level in order to cover the cost of the premiums during the “holiday” period.

Does AOCDS have complete discretion in determining when and at what amount the reserves are considered overfunded and what they can do with those “excess” funds? Contrary to what County non-Sheriff employees and retirees are given, can AOCDS continue to subsidize its retiree members? Can AOCDS expand coverage to survivors and add new benefits? Can this be considered “similar?” These are all very important questions to be clearly resolved in the upcoming MOU.

Annual Required Contribution (ARC) Issue

Since 2007, all County employees (Sheriff and non-Sheriff) have been required to pay as much as 3.6% of their bi-weekly base salary to the County Retiree Medical Trust to offset the ARC in order to continue the retiree Grant for eligible retirees. These ongoing employee contributions ensure the sustainability of the County Retiree Medical Trust for all qualified County employees.

The 2012-2016 MOU adopted by the Board of Supervisors (at Section 8.E), potentially exempts some of those County employees included in the “55 safety formula” (e.g., Sheriff employees) from having to pay any ARC contribution as of July 1, 2015. Their ARC would, over time, be reduced from 3.6% of their base salary to as low as zero.

As of July 1, 2015, County employees who are not “55 safety formula” employees will essentially be paying the entire cost of the monthly County retiree contributions paid to the AOCDS Trust for Sheriff employee medical coverage. This

change clearly results in a significant difference between what is required of Sheriff employees and those who are not Sheriff employees.

The Grand Jury was informed that the MOU provisions leading to the elimination of the ARC for Sheriff employees was added to the MOU in a closed session of the Board of Supervisors. This session was held after the formal negotiations had been concluded by the negotiating teams representing the County and AOCDS, and effectively prevented review and comment by either of the negotiating teams before it was ultimately adopted by the Board of Supervisors.

MOU Negotiation and Final Approval/Adoption Process

A number of individuals and organizations have complained that the collective bargaining process in the County, particularly with the Orange County Employees Association and AOCDS, is not sufficiently transparent. The complainants want:

- Much more transparency in the negotiation process;
- Independent, credible economic and actuarial assessments of the potential implications associated with the proposed terms of the contract; and
- Adequate time to review, comment on, and publicly debate the proposal before it is brought up for a final vote for adoption by the Board of Supervisors.

What can one conclude when a four-year MOU, whose term was to cover from late 2012 through mid-2016, was not adopted by the Board of Supervisors until July 2014? This was not the first time the County had negotiated the terms of such a contract. In one form or another, this negotiation process has been ongoing since 1990, more than 25 years.

Confidential MOU Negotiations

The process for developing the current County-AOCDS contract entailed two years of confidential, behind closed doors negotiations. The negotiation sessions normally included senior representatives from the County and AOCDS and their retained labor negotiators. At times, closed session discussions might include the Sheriff and some or all of the five County Supervisors. There is clearly a need for the Board of Supervisors to conduct closed sessions for certain sensitive subjects like litigation issues and personnel matters. It is not clear, however, why closed sessions and a general lack of transparency to the process are necessary for all discussions regarding the terms of a MOU between the County and a bargaining unit.

Lack of Opportunity to Review and Comment

The culmination of two years of negotiations, with limited transparency to the public, resulted in a proposed MOU not being made available for public review, until seven calendar days before the matter was to be first voted on by the Board of Supervisors. The Grand Jury believes a week is not adequate time for the public to review such a complex agreement with potentially significant short- and long-term economic implications to the County. The proposal did not contain an independent

economic and actuarial assessment of the proposed MOU and there was insufficient time for County residents to review, assess, and understand the implications and provide credible input to their Supervisors prior to the Supervisors' vote on whether to adopt the MOU.

The Final Stages of an Agonizing Process

The final stages of the negotiation process for the current MOU were prolonged and somewhat contentious. Initial negotiations commenced in August 2012 with ongoing meetings held between the two official negotiating teams: AOCDS executives and their labor attorney and County executives and their labor attorney.

Over the course of the nearly two-year process, several closed session meetings with the Board of Supervisors were held to discuss the progress of the AOCDS contract negotiations. At a closed session meeting held in April 2014, the Board of Supervisors voted 5-0 to approve a proposal to AOCDS containing no changes from the previous MOU to Sheriff Annual Required Contributions (ARC) requirements. That is, the active Sheriff contributions would remain somewhat consistent with what active non-Sheriff County employees would have to contribute toward retiree medical insurance.

The County knew AOCDS wanted significant ARC reductions for its members (eliminating the ARC requirement for some), but all five Supervisors voted to reject this proposal even though doing so at this point would risk going to mediation. The Grand Jury presumes that a mediator would have proposed a suitable compromise Sheriff ARC amount, and that would certainly be a contribution larger than zero.

A little more than two months later, on June 24, 2014, a closed session meeting of the Board of Supervisors was held. Following the meeting's call to order, one of the Supervisors made a proposal to make significant changes to the AOCDS MOU proposal that had previously been approved in April by a 5-0 Board of Supervisors vote.

These proposed contract changes would essentially negate the negotiation strategy that had been unanimously agreed upon by the Board of Supervisors in April. The proposal would include the ARC reductions AOCDS had wanted and that the Board had specifically agreed to reject, preferring instead to go to mediation. The terms of this new proposal would, over time, greatly reduce Sheriff employee contributions and, in some instances, exempt Sheriff employees from having to make ARC payments for their retiree health care. If approved, this would result in the County and its non-Sheriff employees having to make up the ever-increasing medical insurance cost difference for all qualified County retirees.

The Board of Supervisors' Agenda Staff Report for its July 15, 2014 meeting (County, 2014c) acknowledged that the County would ultimately have to "pick-up the cost of the reduction of these amounts" and estimated the cost impact of this proposal to be \$1.7 million in Fiscal Year 2014-2015 and \$3.5 million in Fiscal Year 2015-2016. County of Orange (2014c). Of course, the long-term implications would be even more daunting for the County. If approved, the County would have to indefinitely continue to make up for what Sheriffs employees would no longer be contributing toward the ever-increasing costs of retiree medical insurance.

One observer of this closed session indicated that as soon as the proposal was made, two other Board members almost immediately concurred with the proposal that would place on the County significant additional long-term financial responsibilities for retired health care coverage for Sheriff employees. It was further reported to the Grand Jury that the ensuing discussion of the matter was “brief” and no further study of the potential implications of the new proposal was considered by the Board before a vote was held on an MOU containing the new proposal. Had the County just decided to negotiate against itself? After all, had not all five Supervisors agreed in April to go to mediation to avoid this exact outcome? What had happened in the intervening two months?

It was reported to the Grand Jury, based on the dialogue observed between the five Supervisors, that the manner in which the new provisions were proposed resulted in two Supervisors opposing final approval of the MOU. The MOU, containing these terms, was ultimately approved by a 3-2 vote of the Supervisors at the regularly scheduled Board of Supervisors meeting on July 15, 2014. Therefore, based on the information provided to the Grand Jury, the Grand Jury has concluded that greater transparency is called for in the MOU negotiation process.

An Opportunity for Transparency – “COIN”

Something positive may actually have come as a result of all of this. Following Costa Mesa’s lead, one of the two Supervisors who had opposed the new AOCDS MOU proposed adoption of a County ordinance that would require transparency for employee contract negotiations. The ordinance (Sec. 1-3-12.), titled “Civic Openness in Negotiations” (COIN), was adopted by a 5-0 vote in August 2014.

County union leaders criticized the ordinance as singling out public employees, and pointed out that the ordinance does nothing to require transparency in the County’s negotiation of contractual agreements with private companies who might have contributed to Supervisors’ political campaigns. In an attempt to address those concerns, the Orange County Employees Association (OCEA) endorsed State legislation (SB 331), titled “Civic Reporting Openness in Negotiations Efficiency Act” (CRONEY). CRONEY would impose similar transparency requirements as those contained in COIN ordinances for employee contract negotiations for virtually all third party contracts the County pursues.

Regarding COIN, the OCEA filed an unfair labor practice charge with the Public Employees Relation Board (PERB), claiming that the County did not abide by the “meet and confer” requirements of the Meyers-Milias-Brown Act prior to adopting COIN. As of June 2015, PERB had not yet issued a ruling on PERB’s unfair labor practice charge.

The COIN ordinance requires that the County retain the services of a principal negotiator (not a County employee) with demonstrated expertise in negotiating labor and employment agreements on behalf of public entities. COIN requires “reporting out” formal offers and counteroffers from closed sessions. It has already been claimed, with respect to other public agencies, that some COIN ordinances have been circumvented by characterizing what would normally be considered formal offers and counteroffers as

“supposals” that are not reported out. This practice defeats the letter and the spirit of the COIN ordinance and should not be tolerated in Orange County.

Also, per COIN, the County Auditor-Controller is required to prepare and regularly update an “Independent Economic Analysis.” That analysis is required to describe and summarize the fiscal costs to the County and assess how the proposed contract would differ from the current contract.

Everything associated with COIN compliance is required to be made available on the County’s website. Adoption of any future MOUs will first require that the matter be heard at a minimum of two Board meetings wherein the public would have adequate opportunity to review and comment on the matter.

Adoption of the COIN ordinance appears to be a very positive development. However, COIN is only an ordinance, which is always subject to repeal or sunset by a majority of the Supervisors. As a matter of fact, during the debate on whether to first adopt the COIN ordinance, one of the Supervisors proposed that the ordinance sunset in 2016, the year the current AOCDS MOU will expire. The proposed sunset provision was rejected.

If COIN remains intact, the Supervisors and the public will certainly have an opportunity, in the next year, to assess whether the ordinance is having its intended effect, as the current County-AOCDS MOU expires on June 30, 2016.

FINDINGS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled “Orange County Sheriff Medical Insurance: Transparency Problems Abound,” the 2014-2015 Orange County Grand Jury has arrived at nine principal findings, as follows:

- F.1.** Numerous provisions contained in the Memorandum of Understanding are ambiguous as they relate to medical insurance coverage for Association of Orange County Deputy Sheriffs active and retiree members.
- F.2.** There are no limitations in the Memorandum of Understanding on how the Association of Orange County Deputy Sheriffs Trust’s reserves are to be used, what should be done if the reserve is over-funded, or what would happen to the funds in the Blue Cross Stabilization Fund when the agreement between the Association of Orange County Deputy Sheriffs Trust and Blue Cross is terminated.
- F.3.** The County has not insisted that the Association of Orange County Deputy Sheriffs Trust have a formal anti-fraud program, accounting policy and procedure manuals, or disaster recovery plan.

- F.4.** The jointly retained auditor selection process does not guarantee that the three auditor candidates are qualified, willing to do the work if selected, and will actually do the work if selected.
- F.5.** The Association of Orange County Deputy Sheriffs Trust has subsidized retirees' health benefits.
- F.6.** Contrary to the terms of the Memorandum of Understanding, Association of Orange County Deputy Sheriffs employees are receiving health care coverage from the Association of Orange County Deputy Sheriffs Trust.
- F.7.** Auditors have noted a number of internal control deficiencies related to the Association of Orange County Deputy Sheriffs Trust.
- F.8.** Allowing only one Reserve study and one Administrative fee study during the entire term of the Memorandum of Understanding is inadequate.
- F.9.** There is a general lack of transparency in the Memorandum of Understanding negotiation and approval process.

RECOMMENDATIONS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled "Orange County Sheriff Medical Insurance: Transparency Problems Abound," the 2014-2015 Orange County Grand Jury makes the following ten recommendations:

- R.1.** The County should retain a qualified, experienced, and independent negotiator to assist in the next negotiations between Orange County and the Association of Orange County Deputy Sheriffs and require that entity to prepare an internally consistent Memorandum of Understanding that, for example, makes it clear whether the Orange County contributions are to be used only for active employees. (F.1.)
- R.2.** The County should retain a qualified, experienced, and independent negotiator to incorporate clear terms in the Memorandum Of Understanding that define limitations on the use of Orange County contributions that become reserve funds, specify how to deal with over-funding, and resolve what is to become of the funds in the Premium Stabilization Fund if the Trust's agreement with Blue Cross is terminated. (F.2.)
- R.3.** The County should ensure that an anti-fraud program, accounting policies and procedures manuals, and a disaster recovery plan are developed, implemented, and maintained by the Association of Orange County Deputy Sheriffs Trust. (F.3.)

- R.4.** The County should require the County and the Association of Orange County Deputy Sheriffs Trust to have each of the three-candidate auditor firms sign a firm commitment that the nominees meet specified qualifications, want the business, and will do the business, if selected. (F.4.)
- R.5.** If the County is convinced that Sheriff retirees should not be benefiting from monthly County contributions to the Trust, the County should seek reimbursement from the Association of Orange County Deputy Sheriffs Trust for funds that the County believes are inappropriately used, e.g., Trust funds used to subsidize retirees medical insurance premiums. (F.5)
- R.6.** The County should seek reimbursement from the Association of Orange County Deputy Sheriffs Trust for funds that the County believes are inappropriately used, e.g., Trust funds used to pay for Association of Orange County Deputy Sheriffs employees' medical insurance. (F.6)
- R.7.** The County should seek to include terms in the next Orange County and Association of Orange County Deputy Sheriffs Memorandum of Understanding that require that the Association of Orange County Deputy Sheriffs Trust have specific additional appropriate and necessary controls in place, and require that the Trust fully implement and maintain the Memorandum of Understanding controls the Trust currently has. (F.7.)
- R.8.** The County should seek to include provisions in the next Orange County and Association of Orange County Deputy Sheriffs Memorandum of Understanding, requiring that Administrative Fees Assessments and Reserve Studies be performed more often than once a term and contain specifications and guarantees of active, equal control/access/involvement by Orange County. (F.8.)
- R.9.** The County should support and take full advantage of Orange County's Civic Openness in Negotiations - "COIN" ordinance in future Orange County and Association of Orange County Deputy Sheriff's Memorandum of Understanding negotiations and approval processes. (F.9.)
- R.10.** The County, at the conclusion of the term of the current Memorandum of Understanding, should seriously consider discontinuing its agreement with the Association of Orange County Deputy Sheriffs and instead take back its rightful responsibility for administering the medical insurance program(s) for all qualified County of Orange employees. (F.1. through F.9.)

REQUIRED RESPONSES

The California Penal Code section 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected

County official (e.g. District Attorney, Sheriff, etc.), such elected official shall comment on the findings and recommendations pertaining to the matters under that elected official's control within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code section 933.05, subdivisions (a), (b), and (c), provides as follows, the manner in which such comment(s) are to be made:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section 933.05 are required from:

Responses Required:

Orange County Sheriff Medical Insurance:
County Failures in Negotiation, Documentation, Oversight, and Transparency

Responses to Findings F.1. through F.9. and to Recommendations R.1. through R.10. are required from the Orange County Board of Supervisors.

Responses Requested:

Responses to Findings F.1. through F.9. and to Recommendations R.1. through R.10. are requested from the County Executive Officer of Orange County.

ENDNOTES

Auditor Identified Deficiency and Recommendations

¹Develop and Document an Anti-Fraud Program – 2008 Significant Deficiency (Lindquist LLP, 2008b)

The June 30, 2008 audit report concluded that the Trust not having an anti-fraud program was a “significant deficiency” in internal control. The auditor cited Statement on Auditing Standards (SAS) No. 112 as requiring “an entity to have implemented a risk assessment process whereby appropriate individuals are charged with the responsibility to identify and evaluate the risk of a misstatement occurring in their financial reporting process.”

The auditor recognized that the Trust has certain procedures and controls to prevent, deter, and detect fraud; however, noted that the Trust does not have a formal written antifraud program in place. The auditor recommended that the program be developed and implemented.

The auditor mentioned that they have discussed this topic with “various personnel” and offered to assist in the implementation of the recommendations. They also committed to review the status of this item during their next audit engagement. However, the Grand Jury could not find any further reference to the status of this significant deficiency in any future audit report. AOCDS representatives mentioned they thought they had an anti-fraud policy in place. However, the Grand Jury could find no evidence that an anti-fraud program (i.e., something much more comprehensive than a policy), as prescribed by the auditor, has been developed or implemented by AOCDS.

²Accounting Policy and Procedure Manuals – 2008, 2011, 2012, 2013 Comments and Recommendations (Lindquist LLP, 2008b, 2011d, 2012a, 2013d)

The auditor noted that the Trust does not have administrative and accounting policies and procedures manuals in place. The auditor recommended that the Trust continue working on developing the manual “in order to help ensure consistent application of the Plan’s policies and procedures.”

The Grand Jury could find no evidence that policies and procedures manuals have ever been developed, adopted, or implemented. Representatives from AOCDS mentioned they are waiting to do this until their “new system” is in place. The new system is expected to be in place following the “open-enrollment” period that will conclude at the end of May 2015. In fact, since at least 2008, AOCDS has had no accounting policies and procedures manuals.

³Disaster Recovery Plan – 2008, 2014 Comments and Recommendations (Lindquist LLP, 2008b, 2014a)

The auditor recommended that a formal disaster recovery plan be developed in the event there is an interruption of the Trust’s operation. The plan should address the following:

- Restoration of essential business systems
- Relocation if the Trust's premises are damaged or destroyed
- Restoration of interrupted communications services
- Re-creation of electronic or other files and records
- Assessment of insurance coverage

Additional material misstatements identified by the auditor, further supporting the need for improved controls, include:

- Restatement of net assets (Lindquist LLP, 2013a) – The Trust's 2012 financial statements pertaining to the funds contained in the Blue Cross Premium Stabilization Fund (reserves) were under-reported by \$1.03 million.
- Accounting records (Lindquist LLP, 2012b) – The Trust continues to maintain its accounting records on the cash basis of accounting. Because the financial statements are prepared on the accrual basis of accounting, the auditor has repeatedly recommended that the Trust calculate receivables and payables at year-end using the accrual basis.

Other relevant opportunities for strengthening internal controls include:

- Investment Advisor report (Lindquist LLP, 2015b) – The investment advisor prepares a report based on the combined portfolio of the AOCDS and the Trust. Because these two entities are separate and distinct organizations, the auditor recommended that, unlike in the past, two separate reports should be prepared.

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- County of Orange (2014b) and The Association of Orange County Deputy Sheriffs (2014). Agreement for Professional Services between County of Orange, The Association of Orange County Deputy Sheriffs, and Lindquist LLP (August 22, 2014)
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- Lindquist LLP (2008a). AOCDS Medical Benefits Trust Financial Statements as of June 30, 2008 (October 31, 2008)
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- Lindquist LLP (2009). AOCDS Medical Benefits Trust Financial Statements as of June 30, 2009 (December 10, 2009)
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- Lindquist LLP (2010b). Association of Orange County Deputy Sheriffs Medical Benefits Trust and County of Orange Independent Accountant's Report on Applying Agreed-Upon Procedures as of June 30, 2010 (November 23, 2010)
- Lindquist LLP (2011a). AOCDS Medical Benefits Trust Financial Statements as of June 30, 2011 (November 7, 2011)
- Lindquist LLP (2011b). Association of Orange County Deputy Sheriffs Medical Benefits Trust and County of Orange Independent Accountants' Report on Applying Agreed-Upon Procedures as of June 30, 2011 (November 7, 2011)
- Lindquist LLP (2011c). Significant Audit Findings for the year ended June 30, 2011, To the Board of Trustees of AOCDS Medical Benefits Trust (November 7, 2011)
- Lindquist LLP (2011d) Comment and Recommendation for the year ended June 30, 2011, To the Board of Trustees of AOCDS Medical Benefits Trust (November 7, 2011)
- Lindquist LLP (2012a). AOCDS Medical Benefits Trust Financial Statements as of June 30, 2012 (November 29, 2012)
- Lindquist LLP (2012b). Association of Orange County Deputy Sheriffs Medical Benefits Trust and County of Orange Independent Accountants' Report on Applying Agreed-Upon Procedures as of June 30, 2012 (November 29, 2012)

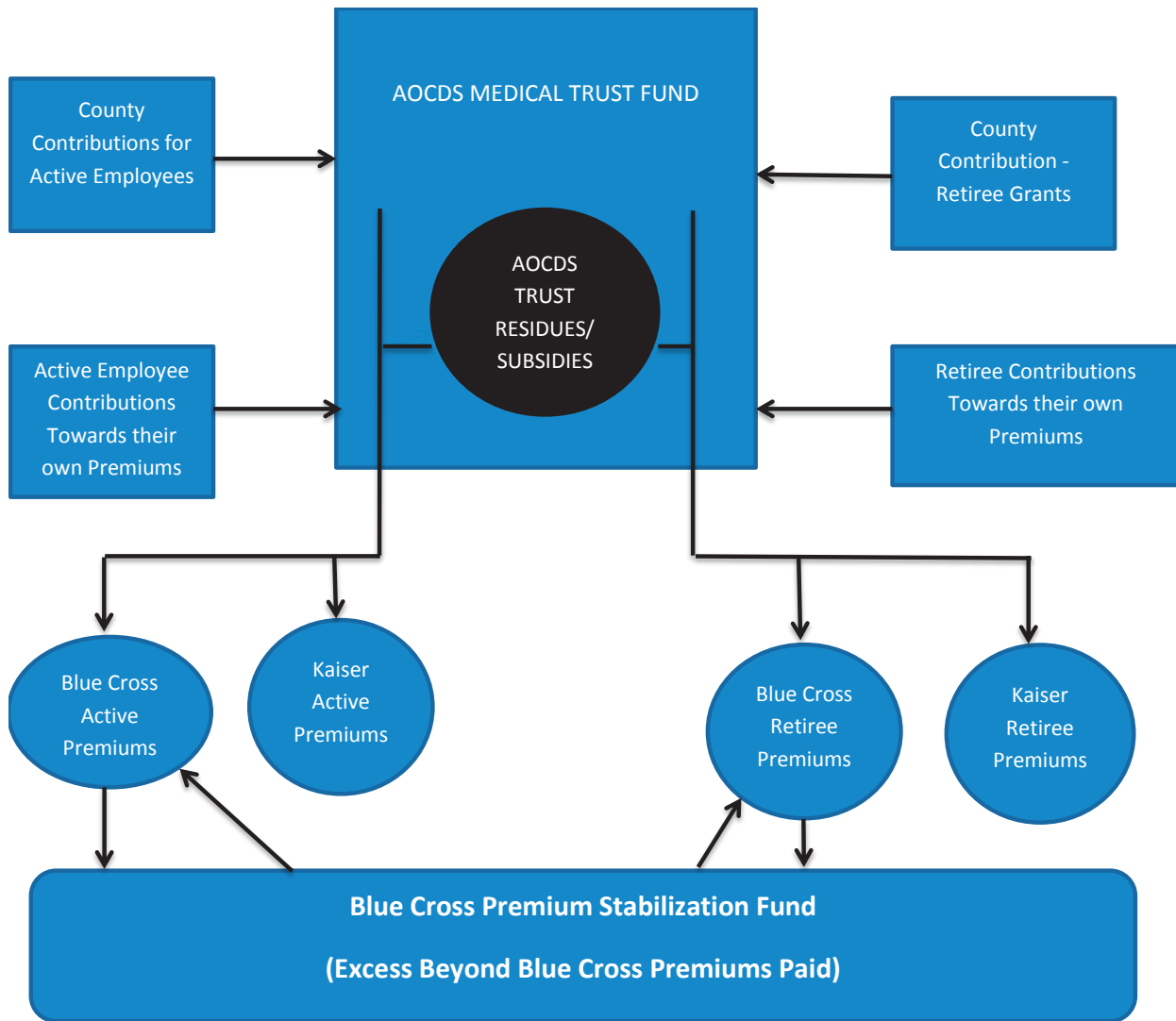
Orange County Sheriff Medical Insurance:
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- Lindquist LLP (2012c). Significant Audit Findings for the year ended June 30, 2012 (November 29, 2012)
- Lindquist LLP (2012d). Comment and Recommendation for the year ended June 30, 2012 (November 29, 2012)
- Lindquist LLP (2013a). AOCDS Medical Benefits Trust Financial Statements as of June 30, 2013 (November 20, 2013)
- Lindquist LLP (2013b). Association of Orange County Deputy Sheriffs Medical Benefits Trust and County of Orange Independent Accountants' Report on Applying Agreed-Upon Procedures as of June 30, 2013 (November 20, 2013)
- Lindquist LLP (2013c). Significant Audit Findings for the year ended June 30, 2013, To the Board of Trustees of AOCDS Medical Benefits Trust (November 20, 2013)
- Lindquist LLP (2013d). Comments and Recommendations for the year ended June 30, 2013, To the Board of Trustees of AOCDS Medical Benefits Trust (November 20, 2013)
- Lindquist LLP (2014a). AOCDS Medical Benefits Trust Financial Statements as of June 30, 2014. (January 27, 2015)
- Lindquist LLP (2014b). Association of Orange County Deputy Sheriffs Medical Benefits Trust and County of Orange Independent Accountants' Report on Applying Agreed-Upon Procedures as of June 30, 2014 (January 27, 2015)
- Lindquist LLP (2015a). Significant Audit Findings for the year ended June 30, 2014, To the Board of Trustees of AOCDS Medical Benefits Trust (January 27, 2015)
- Lindquist LLP (2015b). Comments and Recommendations for the year ended June 30, 2014, To the Board of Trustees of AOCDS Medical Benefits Trust (January 27, 2015)
- Miller, Kaplan, Arase & Co., LLP (2007). Group Medical and Hospital Services Trust for Orange County Deputy Sheriffs Financial Statements as of June 30, 2007 and 2006 (September 27, 2007)
- Miller, Kaplan, Arase & Co., LLP (2008). Independent Accountants' Report on Applying Agreed-Upon Procedures (August 11, 2008)
- Miller, Kaplan, Arase & Co., LLP (2012). Independent Accountants' Report on Applying Agreed-Upon Procedures (January 18, 2012)
- Rael Letson Consultants and Actuaries (2009). Appropriate Level of Reserves (April 23, 2009)

APPENDIX 1 - GLOSSARY

Term	Description
ACLEM	Association of County Law Enforcement Managers
AOCDS	Association of Orange County Deputy Sheriffs
ARC	Annual Required Contribution
ASR	Orange County Board of Supervisors Agenda Staff Report
CAFR	Comprehensive Annual Financial Report
COIN	Civic Openness in Negotiations
County	Orange County
CPA	Certified Public Accountant
CRONEY	Civic Reporting Openness in Negotiations Efficiency Act
HMO	Health Maintenance Organization
MOU	Memorandum of Understanding, Article XII "On-The-Job Injuries, Workers' Compensation and Medical Insurance"
Peace Officer	Deputy Sheriffs I, II & Trainee; Investigator & Investigator I; District Attorney Investigator; Investigator-Polygraph Operator
POS	Point of Service
PPO	Preferred Provider Organization
PSF	Blue Cross Premium Stabilization Fund
SOW	Statement of Work
Supervising Peace Officer	Supervising Attorney's Investigator; Sergeant
Trust	Association of Orange County Deputy Sheriffs Medical Insurance Trust

APPENDIX 2 - AOCDS MEDICAL INSURANCE TRUST



APPENDIX 3 - COUNTY & AOCDS HEALTH CARE ANALYSIS

The Grand Jury performed some analyses on the data obtained from the financial statements provided by the external auditor of the Association of Orange County Deputy Sheriffs (AOCDS) Trust and the County Employee Benefits staff. The data was reviewed to compare the costs, coverages, and reserves of the medical coverage accounts of the two populations, the AOCDS members versus the County employees. The Grand Jury determined that there were some interesting findings from the analyses that might be of help to County decision makers when negotiating the next Memorandum of Understanding with the AOCDS.

First, the Grand Jury decided to test whether the MOU requirement (Section 4.E.2) that monthly retiree premiums are at least 10% higher than the active employee premiums, was being done. The Grand Jury obtained the cost of premiums from the Independent Accountants' Report on Applying Agreed-Upon Procedures report prepared by Lindquist LLP (2014), dated January 27, 2015. Exhibit A, below, is a comparison of the Blue Cross HMO and PPO (BCHMO and BCPPO) premiums charged to County and AOCDS active and retiree participants.

Exhibit A: Blue Cross HMO and PPO Comparison

AOCDS Active Employees		AOCDS Retired under 65		Comparison	
BCHMO	Premium	BCHMO	Premium	Variance	%
Single	\$567.00	Single	\$624.00	\$57.00	10.05%
2-Party	\$1,062.00	2-Party	\$1,165.00	\$103.00	9.70%
Family	\$1,475.00	Family	\$1,618.00	\$143.00	9.69%
BCPPO	Premium	BCPPO	Premium	Variance	%
Single	\$808.00	Single	\$887.00	\$79.00	9.78%
2-Party	\$1,615.00	2-Party	\$1,773.00	\$158.00	9.78%
Family	\$2,120.00	Family	\$2,324.00	\$204.00	9.62%

(Lindquist LLP, 2014b)

It appears that retiree premium rates for the year starting July 1, 2013 were less than 10% higher than active members in almost every category of coverage in both HMO and PPO plans. Although the percentage differences were not significant, from the data available for review, it is not possible to determine whether the dollar value of the variance was significant.

The Grand Jury also decided to extend the analysis to determine the premium differential between the County's active employees and its retirees. The results indicated that, for comparable coverages, County retirees generally paid a significantly higher rate than County active employees (35-50% higher) did and also as compared to AOCDS active and retiree members. That is, AOCDS retirees only pay slightly more than 9% more than their active AOCDS counterparts for comparable coverage.

Exhibit B: County HMO Comparison

AOCDS Active Employees		AOCDS Retired under 65		Comparison	
County HMO	Premium	County HMO	Premium	Variance	%
Single	\$467.90	Single	\$932.25	\$464.35	99.24%
2-Party	\$935.80	2-Party	\$1,864.52	\$928.72	99.24%
Family	\$1,324.15	Family	\$2,703.53	\$1,379.38	104.17%

Exhibit C: County PPO Comparison

AOCDS Active Employees		AOCDS Retired under 65		Comparison	
County PPO	Premium	County PPO	Premium	Variance	%
Single	\$759.65	Single	\$1,174.35	\$414.70	54.59%
2-Party	\$1,405.38	2-Party	\$2,172.52	\$767.14	54.59%
Family	\$1,899.16	Family	\$2,935.86	\$1,036.70	54.59%

This premium data was obtained from the County Employee Benefits Division for FY 2013-2014

The Grand Jury next decided to test the clause in the MOU at Section 4.A. that states the following: *“The AOCDS shall provide medical benefits similar to those offered by the County. The plans should include one PPO or POS and one HMO option.”* The Grand Jury obtained data from the County Employee Benefits organization and comparable data from the AOCDS audited financial reports prepared by Lindquist for FY 2014. The results were interesting.

	COUNTY	AOCDS	VARIANCE
MEMBERS COVERED	22,636	2,934	19,702
ANNUAL COST OF PREMIUMS	\$213,290,589	\$40,906,171	\$172,384,418
COST PER MEMBER	\$9,423	\$13,942	(\$4,519)
VARIANCE PER MEMBER PER MONTH			(\$377)

It appears that premiums charged to active and retired County members are \$377 per month less than those charged to active and retired AOCDS members, which again raises the question of whether the medical benefits provided are, in fact, “similar.”

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The Grand Jury also looked at the level of reserves held by the County health plan and the AOCDS Trust reserve (numbers were derived from the FY2014 County Comprehensive Annual Financial Report - CAFR, Internal Service Funds, and from the audited financial statements for the AOCDS Trust). The level of reserves held by the two organizations were significantly different. The Grand Jury compared the reserve levels to the annual premiums paid and the variance was large.

ASSETS	COUNTY PLAN	AOCDS PLAN
HELD IN CASH, INVESTMENTS		\$7,173,204
POOLED CASH ETC PPO PLAN	\$25,510,000	
HMO CASH & INVESTMENTS	\$4,715,000	
BLUE CROSS PREMIUM STABILIZATION FUND		\$8,461,855
TOTAL RESERVES HELD	\$30,225,000	\$15,635,059
PREMIUMS PAID	\$217,156,000	\$40,423,811
RESERVES AS % OF PREMIUM	13.92%	38.68%

So, given this variance, what should be considered to be an acceptable level of reserve for medical insurance? The issue is further complicated by the fact that the County health insurance is self-funded and, therefore, necessitates a higher level of reserves to fund both the Incurred but Not Reported - IBNR and the PSF that protects the fund from catastrophic events that would require payments higher than the annual premiums collected from participants.

However, the AOCDS plan is not self-insured. As a result, the responsibility for covering higher losses than premiums collected falls on the insurance carrier, Blue Cross. The County should obtain an explanation from its own actuary as to why the County's self-insured fund is carrying a lower percentage of reserves as compared to the AOCDS fund that is fully insured by an outside vendor. (Lindquist LLP, 2014b)

THE MENTAL ILLNESS REVOLVING DOOR: A PROBLEM FOR POLICE, HOSPITALS, AND THE HEALTH CARE AGENCY



GRAND JURY 2014-2015

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EXECUTIVE SUMMARY

Crisis intervention and stabilization of the severely mentally ill often begins with the police officer on patrol. The triage conducted at that point—in the field—is critical, and, as society has witnessed recently, can lead to violent and even deadly results. It is crucial for officers to have the proper training, tools, and resources at their disposal to help the mentally ill deal with their demons and, with respect to some suffering from mental illness, control their homicidal or suicidal impulses.

Mental health agencies throughout the State and the nation are struggling to get a grip on the seemingly intractable problem of how to deal with dangerous mentally ill as they hopelessly cycle through the revolving door of crisis intervention, stabilization, incarceration or hospitalization, and release. Unfortunately, Orange County relies on an obsolete, inefficient triage system that handicaps the police officer and results in an inordinate loss of time and resources. Moreover, the County jails and emergency rooms are the worst places in which to treat the severely and dangerously mentally ill.

The Grand Jury has found that Orange County's failure to provide an adequate emergency psychiatric stabilization system has resulted in emergency rooms that are too full to handle medical emergencies. The presence of the severely mentally ill in emergency rooms is also dangerous to staff, police, and other patients. The County's shortcomings with regard to mobile response teams and in-the-field medical clearances of the severely mentally ill, and have caused long delays in evaluating and treating the mentally ill, many wasted hours of valuable police time spent in emergency rooms and while driving the mentally ill to and from emergency treatment facilities. The County's lack of vision and leadership have resulted in a disjointed, dysfunctional system that contributes to the revolving door.

BACKGROUND

“More often than not, the only option for the mentally ill in crisis is to spin in the emergency room's revolving door” (Simon, 2015.)

(An acronym list is included in the Appendix.)

Describing the Scope of the Problem

The most recent national and California data available demonstrate that mental illness afflicts about 20% of the population (Newsweek, 2014). “The vast majority of mental patients are not violent but this is [a television report] about the fraction who are: a danger to themselves or others” (Pelley, 2014). Four to five percent of the adult population in Orange County suffers from a “serious” mental illness that impairs their ability to function, makes it difficult to carry out basic life activities, and sometimes leads them to be a danger to themselves or others (Holt & Adams, 2013.). Examples of a serious mental illness are mental disorders such as schizophrenia, bipolar disorder, manic depressive, severe anxiety, and post-traumatic stress disorder (Bekiempis, 2014).

In Orange County, the annual suicide rate is about nine per 100,000 population overall, but ranges from 16 to 18 per 100,000 population among people over 45 years of

age. About half of the mentally ill adults do not get treatment or medication of any kind. For the other half who do get treatment, inpatient care is decreasing, while outpatient care and prescribed medication is increasing (Holt & Adams, 2013)

Untreated, the severely mentally ill can become violent, but treated, they can live healthy, productive lives. Many lives have been lost when the dangerously mentally ill are overwhelmed by severe psychiatric disorders—mired on the streets, fearful of all authority figures, and spiraling out of control—in a decline usually stopped only by death, prison, or a 5150 temporary hold. Many family members are at a loss when it comes to coping with their loved one who poses a danger to himself/herself, his close relatives, and society.

Mentally Ill and Homelessness

In 1985, the Bronzan-Mojonnier Act enacted provisions to identify the shortage of services which results in the criminalization of the severely mentally ill and to provide community support and vocational services for the severely mentally ill who are homeless. In 1999, the Legislature authorized grants for pilot programs to provide services for the severely mentally ill who are homeless, recently released from jail or prison, or at risk of being homeless or incarcerated in the absence of services. This pilot program was extended to all counties, including Orange County, the next year (Holt & Adams, 2013)

“These persons wander the streets hungry, homeless, and without hope. They cycle through our hospitals and are released with no assured after-care or plan to meet their human needs – and, all too often, in my experience, wind up in our jails and prisons, not because they are criminals, but because there simply is no place for them in our society” (Judge Shabo, 2014).

Mentally Ill and the Jails

Research has shown that at least 20% of jail inmates and 15% of state prison inmates have a serious mental illness. There are more mentally ill persons in jails than in hospitals. The prevalence rates of serious mental illnesses in jails are three to six times higher than for the general population. The county jail may very well be the County’s largest mental institution (Orange, 2015.)

The root problem is a patchwork mental-health safety net that long ago came apart at the seams, resulting in the criminalization and stigmatization of people trying to cope with severe mental illness. Mental health advocates take the issue back to the 1960s, when the doors of state psychiatric institutions were flung open and people who could not afford mental health care were dumped out onto the streets. In Orange County, the severely mentally ill cycle in and out of the County Jail, through the arrest-incarcerate-release-repeat revolving door while painfully suffering the symptoms of their illness.

The fact is that a jail is the last place where the mentally ill should be treated. Jails simply were never created to be *de facto* mental health facilities. They are not structurally appropriate for mental patients. Their dark, threatening, confining spaces

are even more constricting than the asylums and mental institutions of the past and are not at all welcoming environments conducive to treatment or therapy. (Miller, 2013)

“The use of a jail as a mental health ward is inefficient, ineffective, and, in many cases, inhumane” (Sewell, 2014). Without the appropriate treatment and services, people with mental illnesses continue to cycle through the criminal justice system, often resulting in tragic outcomes for these individuals and their families” (Orange, 2015). Former Supervisor John Moorlach is reported to have stated, “We cannot allow our jails to be the predominant location for housing mentally ill people” (Gerda, 2014).

Moreover, jails require two to three times more funds to house and treat the mentally ill than to treat the non-mentally ill. The mentally ill stay longer, require more staff, cause more management problems, are more likely to commit suicide, and are more susceptible to abuse by other inmates and are at a higher risk of recidivism upon release than other inmates. Furthermore, jails are ill suited to assuring that mentally ill persons will receive the psychiatric aftercare that they will need upon their release. (Orange, 2015)

Dealing with the Problem

Voluntary Treatment of the Mentally Ill

All counties in California are required to provide mental health programs. Under previously existing law; however, a health care agency could only encourage the severely mentally ill—no matter how psychotic, delusional, and dangerous—to voluntarily seek and submit to treatment and medication. To this end, Orange County (OC) Behavioral Health Services (BHS) offers many valuable, effective programs to treat the mentally ill. The BHS has a program called Full Service Partnerships, which offers an all-encompassing continuum of services, including carefully tailored treatment plans, assistance with entitlements (Social Security, Medi-Cal), an integrated-person focus—combining psychiatric, medical, and substance use issues—life skills training, and community integration (Orange, n.d.)

Some of these programs and services are provided by the OC Health Care Agency (HCA) BHS staff, and some are delivered by private providers under contract with the County. In addition, HCA avails itself of a Mental Health Court—one of several collaborative courts—to assist the mentally ill who merit diversion from the criminal justice system into programs that can treat their illness. Of the 239 Mental Health Court graduates in 2014, only 34% have been re-arrested (Superior, 2014).

Involuntary Treatment of the Mentally Ill

If a mentally ill person refuses to submit to treatment or medication, the law provides for involuntary treatment. However, this is only temporary and only where, as a result of his mental condition, the person is a danger to himself or others or is gravely disabled. Moreover, the short-term involuntary treatment is given only to stabilize the individual, after which he must be released immediately.

In 1967, the Lanterman-Petris-Short Act (LPS Act) was signed into law and was codified in Welfare and Institutions Code sections 5150 *et seq.* A 5150 is a term commonly used to describe a person who, due to a mental condition, is a danger to himself, a danger to others, or is in so gravely disabled a state that he is unable to provide for his own food, clothing, or shelter. The term “5150” is used throughout this report, but the Grand Jury means in no way to demean the people who are experiencing a psychiatric crisis. Under the LPS Act, a County health care clinician, a police officer, or a psychiatrist can place a 72-hour hold on a 5150 for involuntary evaluation, stabilization, and treatment (California Welfare and Institution Code section 5150).

A 5150 hold can last only 72 hours. It may be extended by a psychiatrist, for an additional 14-day hold if the patient remains unstable (California Welfare and Institution Code, section 5250). Within four days of the 5250 hold, the 5250 is entitled to a certification review and probable cause hearing before a judge or hearing officer (California Welfare and Institution Code, section 5256). This 5250 hold may also be extended another 14 days.

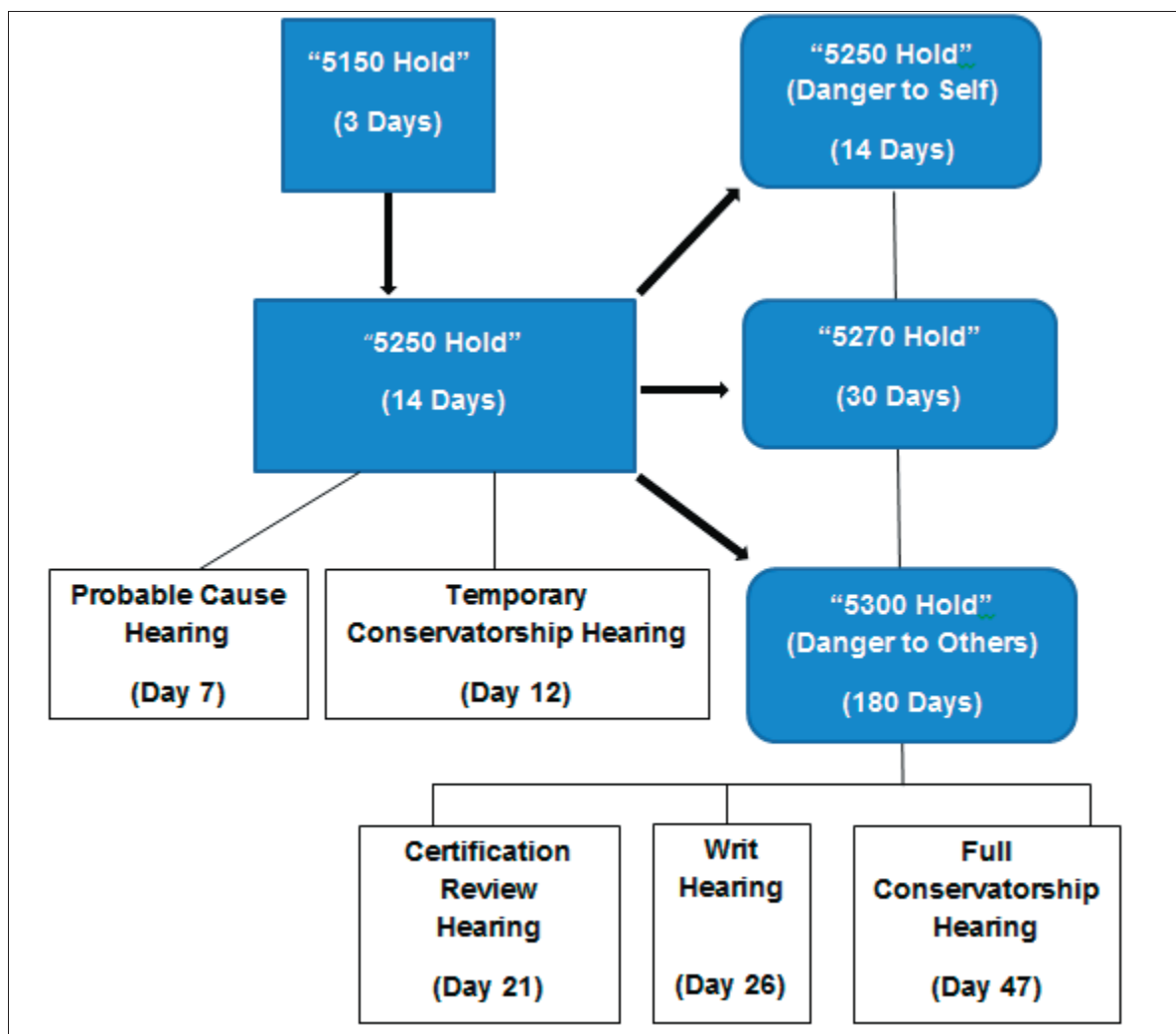
If the patient is still unstable after two consecutive 14-day 5250 holds, the attending psychiatrist may extend the hold for an additional 30 days (California Welfare and Institution Code, sections 5270, 5300). If at any time the patient refuses to take his medication, a capacity hearing is conducted (also known as a “Riese” hearing), at the conclusion of which the patient can be forced to take his medication (California Welfare and Institution Code section 5332).

Mental Health Conservatorship

Involuntary hospitalization beyond 61 days requires a mental health conservatorship (LPS conservatorship) hearing in the superior court. An LPS conservatorship is used only for the mentally ill whose psychiatric disorder is so severe that it renders them gravely disabled, in that, it prevents them from providing for their basic needs of food, clothing, and shelter. An LPS conservatorship serves to provide individualized treatment, supervision, and living arrangements for the gravely disabled and can involve confinement in a locked psychiatric facility.

Only the professional treatment staff at the hospital where the 5250 is being treated can start the process. After an investigation, the OC Public Guardian petitions the Probate Court to establish a temporary, 30-day mental health conservatorship and eventually a general, six-month conservatorship. Appointed counsel represents the conservatee from the Public Defender’s Office. If the Court grants the petition, it must ensure that the placement is in the least restrictive, appropriate setting, must maintain ongoing supervision over the conservatorship, and must terminate the conservatorship if it determines that the person no longer meets the criteria. (See Figure 1)

Figure 1: Involuntary Hold Process



Involuntary Assisted Outpatient Treatment (Laura’s Law)

On January 10, 2001, Laura Wilcox was at work at California’s Nevada County Behavioral Health Clinic. A client appeared for a scheduled appointment. Without warning or provocation, he drew a handgun and shot Laura four times. When the rampage at the clinic and at a nearby restaurant ended, Laura and two others lay dead, and two were injured. California passed Laura’s Law to help make sure the same thing does not happen to another family. Laura was at the clinic that day to help (About Laura’s Law, n.d.).

The Reason for Laura’s Law

Because the 1967 LPS Act requires that the person be released as soon as his condition has been stabilized, it actually impedes those in need of extended care from receiving it. It fails to take into account new discoveries about mental illness, the vastly different present framework of mental services, and the hugely improved medications that are now available. Thus, the present process has proven to be dysfunctional,

resulting in a shameful, revolving-door pattern that neither shows care for the gravely disabled nor protects the public from the clear, ever-returning danger posed by a 5150 to himself or to others.

As reported to have been stated by Chairman Todd Spitzer at the meeting of the Board of Supervisors when Laura's Law was adopted, "We have an obligation to do whatever we can to assist those who really have no remedy. They don't know how to help themselves." At the meeting, Chairman Spitzer is reported to have noted that one of his relatives had schizophrenia and had revolved in and out of the criminal justice system. "I watched it just grind away at my uncle. We have to deal with the guilt and the frustration and the obstacles that the families are dealing with, because they're watching their loved ones deteriorate" (Gerda, 2014)).

It is the paranoid, schizophrenic nature of severe mental illness that prevents those in desperate need of help from having insight into their need to take their prescribed medication or from availing themselves of traditional community-based mental health services. The best evidence shows that high-risk, dangerous 5150s are routed into the temporary, involuntary treatment system, not because they are not able to access voluntary outpatient services, but because their mental impairment renders them unable to recognize their illness and deprives them of the self-awareness sufficient to engage in voluntary, community-based outpatient treatment programs. At the same time, studies demonstrate that high-risk 5150s with psychotic disorders can greatly benefit from intensive, sustained outpatient treatment provided in concert with an outpatient court order (Holt & Adams, 2013).

In fact, extensive assisted outpatient treatment (AOT) under Laura's Law can actually lead to significant reductions in police contacts, emergency room visits, hospitalizations, incarcerations, suicides, violence, and homelessness. Published studies have shown that court-ordered AOT not only results in improved clinical outcomes for the participants, but also in overall cost savings. It is estimated that if AOT were adopted statewide, the projected savings over the following two-and-one-half years would be \$189,491,479 (Quanbeck, n.d.).

Description of Laura's Law

Laura's Law (California Welfare and Institution Code section 5345 – 5349.5; AB 1421), adopted in 2002, created as an optional program for counties to provide multidisciplinary, intensive, court-ordered, involuntary outpatient treatment in renewable six-month periods for the high-risk, substantially deteriorating 5150 who is unlikely to survive in the community and who has neither the capacity to understand his need for treatment nor the competence to make rational decisions. Thus, Laura's Law offers court-supervised, extensive, sustained, early-intervention outpatient treatment of the severely mentally ill in programs called Full Service Partnerships (FSPs). In contrast to court-ordered, temporary, involuntary 72-hours commitments, which operate to stabilize temporarily a 5150 who has reached a crisis point in which he poses a danger to himself or to others, Laura's Law allows health professionals to provide medication and treatment on an ongoing, sustained basis.

Referrals to Laura’s Law may be made by a police officer or probation officer, immediate family members, adults residing with the individual, the director of a treating facility or hospital, or a treating licensed mental health professional. Laura’s Law applies to the severely mentally ill person whose illness is severe and persistent.

To qualify for AOT, the person must be an adult with a history of noncompliance with prior attempts to treat him, as shown by at least two placements in a hospital or the mental health unit of a correctional facility in the last three years, or at least one incident (an act, threat, or attempt) involving serious and violent behavior toward himself or others in the last four years. In addition, the mental condition must be substantially deteriorating, the person must be in need of AOT to prevent a relapse that would be likely to result in grave disability or serious harm to himself or others, and there must be a clinical determination that the person is unlikely to survive safely in the community without supervision (California Welfare and Institution Code, section 5346).

Before filing an AOT petition, the Outreach and Engagement Team must offer the candidate an opportunity to participate voluntarily in the development of a treatment plan for services. If the candidate fails to engage and refuses to settle, the superior court may order that the candidate submit to a clinical assessment of his present condition. If he refuses, the court may order that the candidate be taken to a hospital for the assessment for up to 72 hours.

The candidate has the right to counsel at the hearing. After the Superior Court hears the testimony, it must determine whether the candidate meets the criteria and, if so, whether there exists any appropriate or feasible less restrictive alternative. It may then order AOT under a treatment plan to be implemented by the FSP, which may not exceed six months. HCA/BHS assigns a personal service coordinator.

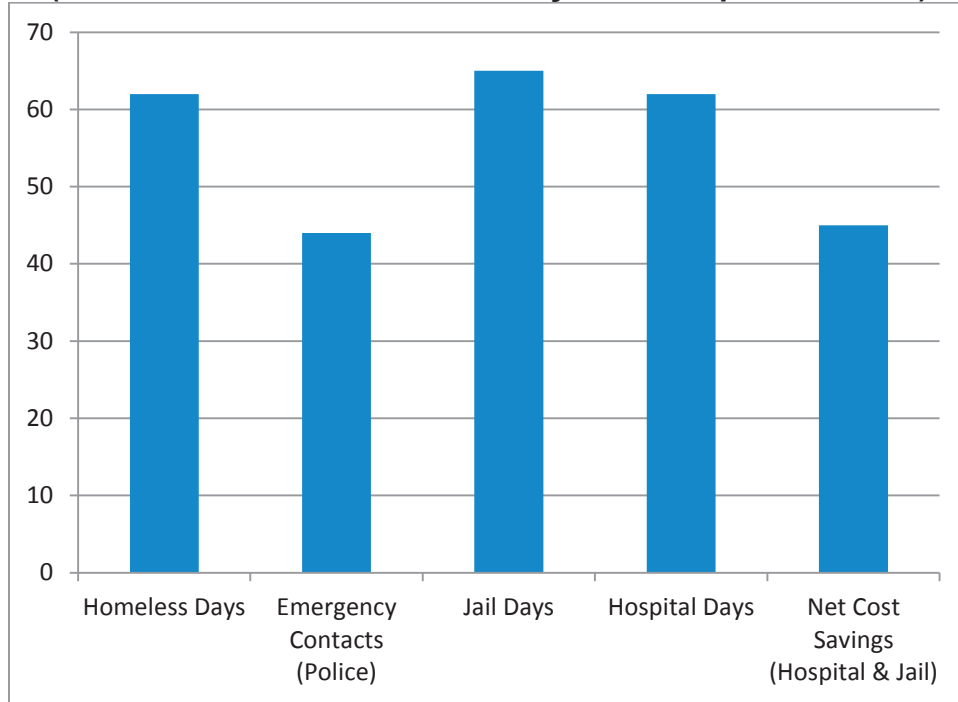
The FSP Program Director must file an affidavit every 60 days stating the candidate continues to meet AOT criteria. The candidate is entitled to a hearing every 60 days to challenge the need for an AOT order. The candidate also has the right to file a petition for writ of habeas corpus.

Success of Laura’s Law

Forty-four states have implemented AOT programs. Nevada County, the first county in California to implement the AOT program under Laura’s Law, opted into the program in 2008. The success of Nevada County’s experiment is shown by dramatic decreases in homelessness, police contacts, arrests, incarcerations, 5150 holds, emergency room visits, and hospitalizations (Assisted Outpatient Treatment, 2014). In addition, Nevada County realized significant cost saving as a result of its implementation of Laura’s Law (Cost Savings, 2012). See Figure 2 for a summary of these successes.

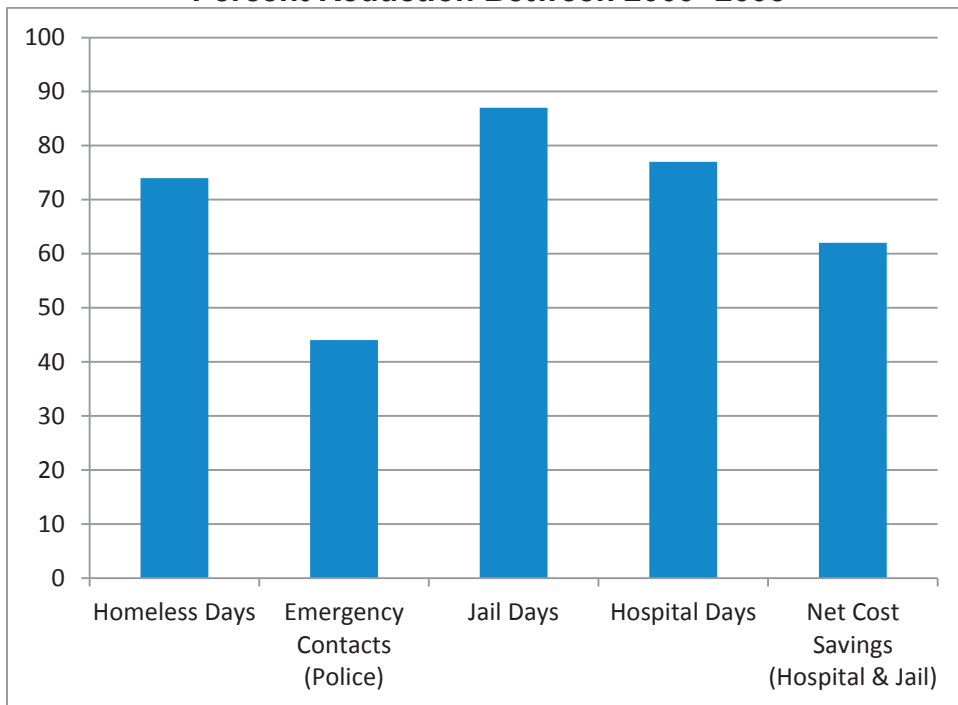
Moreover, New York’s Kendra’s Law – after which Laura’s Law was patterned – has similarly resulted in quantifiable, striking *decreases* in police contacts, homelessness, incarcerations, and hospitalizations, when compared with the old, revolving-door system. See Figure 3 for details.

**Figure 2: Success of Laura's Law in Nevada County
(Percent Reduction over first 2.5 years of implementation)**



(Assisted Outpatient Treatment, 2014)

**Figure 3: Success of Kendra's Law in New York State
Percent Reduction Between 2000 -2005**

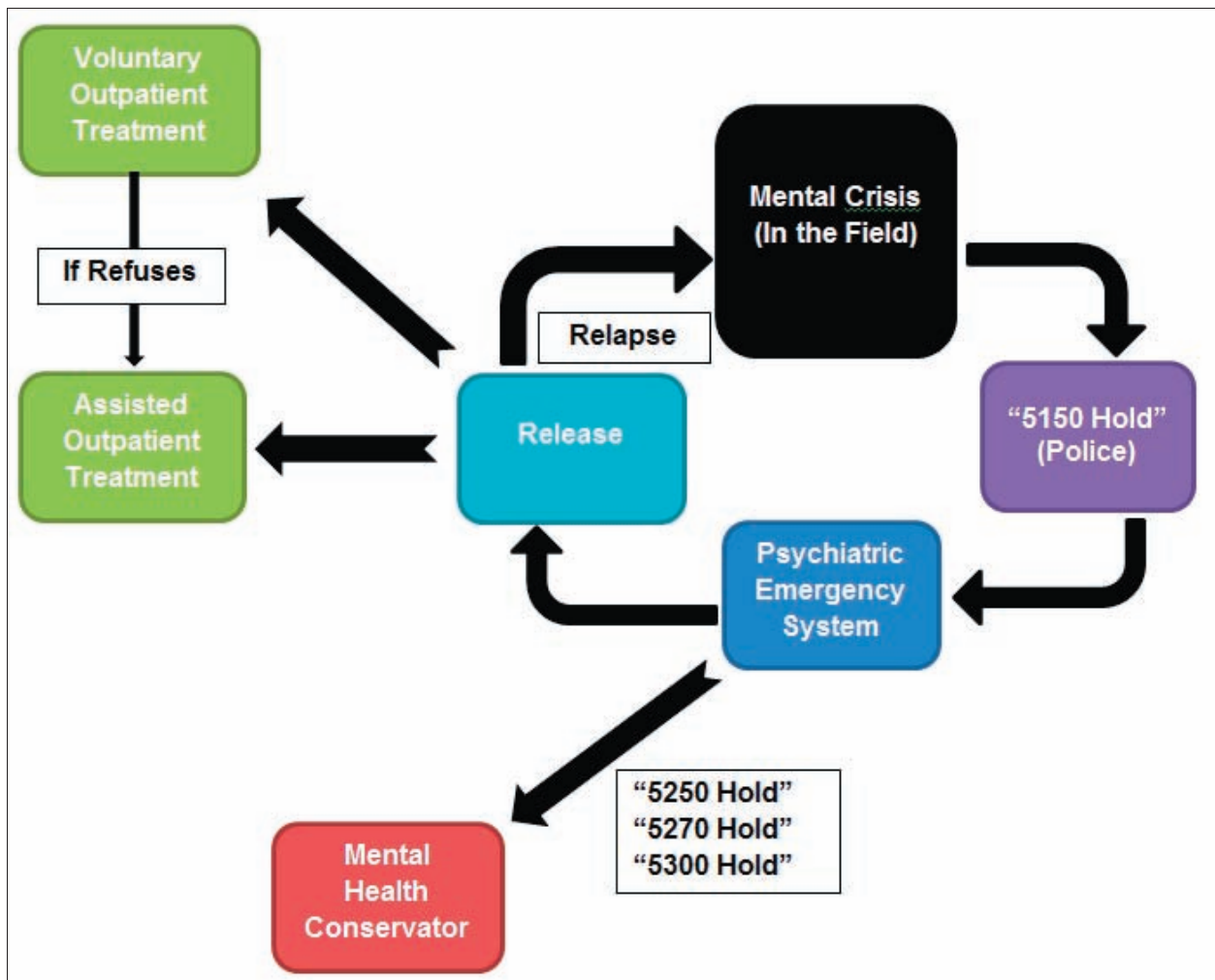


(Carpinello, 2005; Swartz, 2009).

Some critics of Laura’s Law point to the absence of any real “teeth” in the law that can force an unwilling outpatient to take his medications or impose sanctions for walking away from the outpatient treatment program whenever he wishes. However, Laura’s Law works because it depends on the “black robe effect,” to which the severely mentally ill are particularly sensitive. The “black robe effect” is the intimidating factor that leads a mentally ill person to accept treatment. In other words, “someone who is reluctant to accept treatment is given the alternative of a treatment plan he is involved with, or turning it over to a judge to decide, and there is no telling what the outcome will be” (Sforza, 2015).

The law’s success, as demonstrated by the above statistics, cannot be denied. Laura’s Law may very well be the missing piece of the mental-illness-treatment puzzle. Laura’s Law was needed to fill the treatment gap between a 5150’s release and his/her relapse. If used properly, AOT may be the solution to the seemingly endless, revolving-door predicament faced by the mentally ill. (See Figure 4)

Figure 4: The Revolving Door of Mental Illness



AOT is aimed at getting the severely mentally ill the treatment he/she needs in the long term. Its objective is to assist the severely mentally ill to be treated and eventually end the seemingly endless cycle of 5150 episode, medication, stabilization, release, and repeat.

The adoption of Laura's Law is optional for each county. Counties must "opt in," i.e., the board of supervisors must pass a resolution authorizing implementation of the AOT program. Each county must evaluate the AOT program's effectiveness in reducing homelessness and hospitalizations by persons in the program and in reducing their involvement with local law enforcement.

Orange County's Adoption of Laura's Law

Orange County is only the second county in California—and the first large county in California—to opt-in to Laura's Law. Thus, Orange County will serve as a laboratory for the rest of the state to see what works and what does not work. Many other counties, including San Francisco, Los Angeles, Ventura, and San Diego are studying and considering full implementation of this law (Personal interview, June 12, 2015).

At the urging of Supervisor John Moorlach, SB 585 (2013) was introduced and passed to authorize the use of Mental Health Services Act (MHSA) (Proposition 63) funds for any county that implements Laura's Law. (Sforza, 2015) On May 13, 2014, the Board of Supervisors unanimously voted to opt in, ordered that it commence on October 1, 2014, and allocated \$4.4 million of its Proposition 63 funds to treat an estimated 120 severely mentally ill persons during the 2014-15 fiscal year. These funds can be used to cover the expenses for voluntary enrollments as well as for involuntary AOT.

At the time of the County's adoption of the program, the Board of Supervisors requested that OC HCA/Behavioral Health Services (HCA/BHS) set up systems to collect data and that data be reviewed and analyzed for performance outcome, the program's cost effectiveness, and quality improvement. It also directed HCA/BHS to obtain the services of an outside evaluator to produce a complete report on the use and access into the program (who was referred, how many actually met the criteria, how many entered into a negotiated settlement, and how many were court ordered). It ordered measurement of the benefits achieved by the AOT patients, benefits derived by the community and the legal system, such as LPS reduction in conservatorship numbers, and benefits received by law enforcement, such as reduction in calls for service by police and reductions in 5150s.

Handling the Problem in the Field (Police and the Mentally Ill)

Persons desiring to become a sworn police officer in Orange County must graduate from a police academy. POST (Peace Officers Standards and Training) requires that all persons attending police academies receive some training on how to deal with the mentally ill. This POST-certified training on mental illness is concentrated into four hours, which includes crisis intervention training (CIT).

The number of police encounters with the mentally ill in the field is on the rise (Bernard, 2014). For a dangerous and severely mentally ill person, contact with a police officer in the field can be an entry point to the criminal justice system, to a psychiatric

treatment facility, or to the morgue. The difficulty posed in defusing a potentially explosive situation results from three considerations that the officer faces: (1) how to protect him or herself from this dangerous and possibly violent individual, (2) how to protect the public from this person, and (3) how to assist this mentally ill person in receiving the treatment he or she needs.

As first responders to a 911 call involving a dangerous and mentally deranged individual, police officers often act as “street-corner psychiatrists.” They hold the power to prescribe a jail cell or a hospital bed for people living with mental illness. Thus, a police officer must be able to recognize the symptoms of a mentally deranged individual, deescalate the situation, allay the individual’s fears, gain the person’s trust, convince the individual that it is in his or her best interest to cooperate with the officer who merely wants to help, persuade the individual to seek assistance, and prepare to assess and refer the individual to the appropriate agency.

Those decisions require proper training. Police officers need to be trained to defuse mental health crises with the least force possible and connect people to treatment. An encounter with a CIT-trained police officer can help people receive treatment, potentially stopping the arrest-to-court-to-jail cycle from continuing.

Traditional police and SWAT tactics with the severely mentally ill can quickly spiral out of control, backfire, and lead to deadly results. Fully 50% of Americans killed by police officers are mentally ill. Many officers may find it hard to override their prior, ingrained training to contain situations quickly, which sometimes stresses the “command-and-control—do as I say or else” mindset in which some police agencies are steeped. (King, 2015)

CIT-trained officers, on the other hand, are injured 80% less frequently than untrained officers in interactions with the mentally ill, are better at linking people to services, and are less likely to use force. CIT training, based on the “Memphis model” created in 1988, teaches officers how to recognize mental illness, how to interact with people in crisis, and how to de-escalate situations involving a person who needs a psychiatric evaluation¹. Police and the public are at risk if officers do not have CIT training, which includes role-playing exercises with method actors, based on real-life situations. (National, n.d.: Dupont, 2007)

The “TACT” method was developed to assist CIT trained officers in approaching and communicating with the potentially dangerous mentally ill person in a calm, safe, reassuring, and peaceful manner. The acronym stands for four non-threatening techniques that officers can employ to retain control in a non-volatile situation: time, atmosphere, communication, and tone. These concepts are not meant to replace officer judgment when facing changing dynamics in the field.

Triaging the Problem

Crisis Response Teams: CAT, PERT, and PET

Orange County utilizes a Centralized Assessment Team (CAT) and a Psychiatric Evaluation and Response Team (PERT) to provide 24/7 mobile response services to

assess the mentally ill in the field. The teams assist the police and paramedics by initiating a 5150 hold. Whereas members of CAT are on call and respond to the scene when called by the police, PERT members are already embedded with a city's police agency and accompany designated mental liaison officers into the field.

A police officer or a member of CAT or PERT can prepare and "write" the 5150 hold. The 5150 is then transported to the County-operated Evaluation and Treatment Services (ETS), or to the emergency room of a designated hospital for diagnosis, treatment, and stabilization. "Designated" means that the hospital emergency room has been approved by HCA/BHS to receive 5150 patients.

Psychiatric Evaluation Team (PET) members are stationed 24/7 in two hospitals: College Hospital in Costa Mesa (also called College Hospital Crisis Response Team (CRT) and Mission Hospital in Laguna Beach. When potential 5150s arrive at any hospital in Orange County or at a police station, a PET clinician can be dispatched to make a 5150 evaluation if a police officer or a CAT or PERT clinician has not already done so. If the 5150 patient is not insured, the PET clinician will call ETS, fax the results from the medical screening, and inquire into bed availability at ETS or at a contract hospital if the patient has not already been stabilized.

Evaluation and Treatment Services (ETS)

Established in 1970, ETS is a ten-bed psychiatric crisis stabilization unit that provides crisis intervention and stabilization to 5150s. ETS is an outpatient facility and therefore can hold the 5150 no longer than 24 hours. If ETS cannot stabilize the patient within that time, it must have the patient transferred to a contract hospital that has inpatient psychiatric beds.

Other than a psychiatrist, ETS does not have trained medical doctors, pharmacists, or lab technicians. It is not a medical facility, is not a designated emergency facility, cannot conduct medical screening or lab work, and is not certified to perform medical emergency procedures.

Consequently, ETS cannot accept patients who are experiencing a medical problem in addition to their acute psychological disorder, even if the medical issue is no more serious than high blood pressure. ETS also rejects admission to any 5150 who is or may be under the influence of alcohol or drugs. ETS can receive only people who are on Medi-Cal or are indigent.

Hospital Emergency Rooms

In 2014, 15,000 mental health patients were taken to emergency rooms in Orange County. Of these, 2429 were 5150s.

We have been slammed in our Emergency with both psychiatric patient and flu patients. Last night the Medical Director called me and said that we have 17 psychiatric patients in our emergency room—four of them in restraints, with none to spare. Our unit was full. I called ETS at about 8:00 p.m. and was told that they

hadn't even started placing patients from the day as they were still working on the list from two days ago.

Not being able to transfer patients who have been medically cleared and who have been in our emergency room for more than 24 hours is not acceptable. If ETS can handle only 23 patients in a 24-hour period that is simply not adequate for the volumes of patients we are seeing in our emergency room. Anyone going to the John George PES will see the huge contrast between the volume of patients they are triaging and the volume that ETS is capable of triaging, with its limited space and staff.

(Hospital Administrator in Orange County, Personal communication, January 28, 2015.)

Emergency rooms do not offer an appropriate setting for persons experiencing a psychiatric emergency and are not conducive to stabilize a 5150. They are cold, confining, and cluttered with strange and confusing sights and sounds. They are usually crowded and anything but private.

Emergency rooms are often forced to hold mental patients who are acutely dangerous to themselves or others for long periods until an inpatient bed can be found. Psychiatric patients awaiting treatment in hospital emergency rooms for hours and even days—a process known as boarding—has become a major issue across the United States, with exposes appearing in publications such as *The Washington Post* and the *Los Angeles Times*. Comparable California averages show psychiatric patients boarding in emergency rooms for 11 hours (Zeller, 2013).

The presence of a 5150 poses a danger to staff and to the other patients and their families. Moreover, 5150s can be noisy and disruptive, which adds to the tension normally found in emergency rooms. Many times, the 5150 must remain in the hospital emergency room for hours or even days until an inpatient bed can be found.

REASON FOR THE STUDY

The Orange County Board of Supervisors voted to implement Laura's Law and ordered that it take effect on October 1, 2014. Since Laura's Law will sunset on January 1, 2017 (AB 1569), the Grand Jury chose to investigate how the County intended to implement Laura's Law and how it intended to measure its cost effectiveness and performance outcomes in order to provide data regarding the advisability of extending Laura's Law. The Grand Jury also wanted to find out how the County intended to disseminate information about Laura's Law to various departments within the County's HCA, the Sheriff's Department, city police agencies, and the public.

As the investigation progressed, however, the Grand Jury discovered that the County's entire crisis-intervention system for handling 5150s was seriously flawed. During its investigation, the Grand Jury encountered complaints about the County's lack of leadership, vision, and ownership of the problem. It became clear that the County's bean-counter approach to addressing the problem was narrow and that the County

appeared unwilling to develop systems to relieve the police and the hospital emergency rooms from the undue burdens placed on them and to make their jobs easier.

The Grand Jury decided to change the focus of the investigation to crisis triage, intervention, and stabilization systems and services. The Grand Jury also wanted to see how Laura's Law fit into the continuum of treatment available to 5150s. The overall purpose of this study, then, is to seek a solution to the presently dysfunctional, revolving-door pattern of endless cycles of homelessness, arrests, incarcerations, crisis interventions, and serial hospitalizations.

The focus of this study, then, is to highlight the presently dysfunctional, revolving-door pattern of endless cycles of homelessness, incarcerations, and serial hospitalizations under court-ordered, temporary involuntary 72-hour commitments. The Grand Jury chose to investigate this topic in order to determine if the County's system was "broken" and, if so, offer recommendations on how to fix it. As a sidelight, the Grand Jury wanted to examine the effectiveness of Laura's Law and to see how it factored into the equation by reducing the need for so much crisis intervention.

METHODOLOGY

As the Orange County HCA is responsible for caring for the County's indigent mentally ill persons, several HCA personnel were questioned. The Grand Jury interviewed members of BHSs upper management several times. Additionally, individual interviews were held with several field clinicians working as CAT or PERT responders.

Since hospitals play an important part in the triage/evaluation/care system, a number of hospital-related personnel were interviewed. Among these were hospital administrators, emergency room staff, and Southern California Hospital Association members.

Police officers and administrators had a great deal of input in this report. Two separate questionnaires were sent out and responded to by all police departments in Orange County as well as the County Sheriff's Department. The first asked questions about CIT training, comments about the triage process in the field, and knowledge about laws relating to the mentally ill. The second asked for opinions about the adequacy of the County's triaging process and suggestions for improvement of the County's crisis stabilization system. The responses helped identify specific problems and possible solutions from the law-enforcement point of view.

It was important to see the facilities where mentally ill people were evaluated, stabilized, and treated. Members of the Grand Jury visited the following: ETS in Santa Ana, a county-contracted hospital emergency room in central Orange County, and a county-contracted in-patient mental health facility in South Orange County. Two Grand Jurors visited the John George Psychiatric Hospital in San Leandro, California.

Two other county systems relate to the seriously mentally ill: the courts and the Public Guardian. The Grand Jury learned a great deal by visiting the Veteran's Mental Health Court, by attending conservatorship proceedings in the superior court, and by interviewing several high-ranking officials in the Public Guardian's office.

To get a sense of the big picture relating to the police and the mentally ill, members of the Grand Jury attended all of the monthly meetings of the OC Criminal Justice Coordinating Council, where various members provide updates and information concerning the criminal justice system in the County.

Regarding the training of police officers, the Grand Jury visited and reviewed the course outlines of both Golden West College's Police Training Academy and the O.C. Sheriff's Office Training Center. Members of the Grand Jury also viewed five training DVDs relating to police encounters with mentally ill persons, provided by the Orange Police Department.

Lastly, reports (online, media, and hard copy) relating to all aspects of identifying, referring, evaluating, triaging, and treating the seriously mentally ill—in Orange County and elsewhere—were read and considered for this report.

INVESTIGATION AND ANALYSIS

Initially, the OC Grand Jury set out to evaluate how Laura's Law was going to be applied and how its performance metrics would be measured. The Grand Jury also wanted to examine how the County intended to coordinate the involuntary assisted outpatient program with its many successful voluntary outpatient psychiatric Full Partnership programs. It soon became apparent during the investigation, however, that there was a serious problem with the manner in which the HCA/BHS was administering its stewardship over the 5150 process.

Numerous complaints were registered with the Grand Jury concerning the County's alleged lack of vision, initiative, and leadership regarding the 5150 process and psychiatric crisis intervention in general. Many police agencies stated their perception that, the County Health Care Agency's attitude regarding 5150s was to keep the numbers down artificially, and its posture was merely to manage the problem like a traffic cop doing traffic control rather than to embrace it, solve it, and own it. Police agencies expressed the feeling that the County was acting as if the problem of having dangerous and severely mentally ill persons on the streets was the police agencies' problem rather than the Health Care Agency's problem.

As a result of these revelations, the Grand Jury decided to redirect its efforts and to shift the focus of its inquiry. The correctness of this decision was validated when a high-ranking County official conceded that the County was extremely deficient in terms of dealing with the mentally ill. That official went on to state that, while the County tended to compartmentalize its tasks, all departments in the County needed to coordinate better with each other and with outside agencies in order to have a broader, more comprehensive view of the problem.

The main task of the police is to protect and serve the public in the city where they are deployed. It appears to the Grand Jury, therefore, that the time spent waiting for County clinicians to arrive at the scene, the time spent driving the mentally ill to ETS or to a series of hospital emergency rooms, and the time spent waiting hours or days in an emergency room with the mentally ill until a bed becomes available at ETS or in a

contracted hospital, is wasted. All this wasted time is precious time that needlessly takes the police away from carrying out their primary duty of patrol

Moreover, the primary task of the doctors and nurses in hospital emergency rooms is to provide emergency medical treatment and care to arriving patients. Emergency rooms are not designed to be repositories for 5150s or to provide psychiatric care or treatment, other than medication to stabilize a 5150. The time spent by doctors and nurses on dealing with 5150s is precious time that is taking them away from their principal duties.

Sufficiency of Police Training

Training on crisis intervention and treatment (CIT) is of paramount importance, as illustrated by the following example.

Ms. Jones had a history of schizophrenia and bipolar disorder. Her parents called for an ambulance to take her to the hospital. When she was disoriented and went outside, her family called the police, and the cops agreed that Ms. Jones needed to go to the hospital, but when the police quickly moved to put her into the squad car, she panicked. She was holding on to the car doors. The police tried to get her into the car. The big cop slammed her to the ground. She kicked and resisted. One officer put his knee into her back as he handcuffed her. She died. She was 37. It was ruled a homicide. The Anderson family is suing Cleveland and has demanded that all officers be trained to deal with the mentally ill (Simon, 2015).

The Grand Jury sent questionnaires to the Orange County Sheriff and to all 21 police chiefs in Orange County concerning the quantity and quality of training that is given on how to approach and deal with the mentally ill in the field, how to conduct 5150 evaluations, and how to triage an individual displaying signs of mental instability. Questions also were asked regarding the amount of crisis intervention training (CIT) that is required of all sworn officers. The Grand Jury received responses from the OC Sheriff's Department and from all 21 police agencies in Orange County.

At the OC Sheriff's Training Center, each officer candidate receives only a basic, five-hour introductory course on dealing with the mentally ill in the field (known as Learning Domain 37). The curriculum includes such topics as recognition of the behaviors associated with mental illness, indicators of potential for dangerous behavior, factors that show suicidal tendencies, and tactics to de-escalate crisis situations. It also includes an explanation of the LPS Act and strategies for resolving conflicts involving the mentally ill.

This course is certified by Peace Officer Standards and Training (POST). Only three of the 21 police agencies require re-certification of this course—one yearly, one every two years, and one every three years. The Orange County Sheriff's Department (OCSD) requires no re-certification of this coursework.

Regarding crisis intervention training (CIT), only nine of the 21 municipal police agencies in Orange County and the OCSD offer POST-certified CIT courses taught by Golden West College at the Sheriff's Academy. Five police agencies contract with another college, local consultants, or the American Psychiatric Nurses' Association in conjunction with St. Joseph Hospital to offer CIT training. Five police agencies use their own supervisory staff offer CIT training to their officers. The other two offer no specialized CIT training at all.

Because almost all CIT training is certified by POST, these hours count toward an officer's re-certification. The respondents indicated that the number of CIT-training hours varies between agencies. Ten agencies offer only four or less hours, eight agencies (including the Sheriff's Department) offer 16 to 18 hours, four agencies offer 24 hours, and only one city—Santa Ana—offers 40 hours. It can range from zero to 40 hours, but the majority of police departments *offer* only 16 or 24 hours.

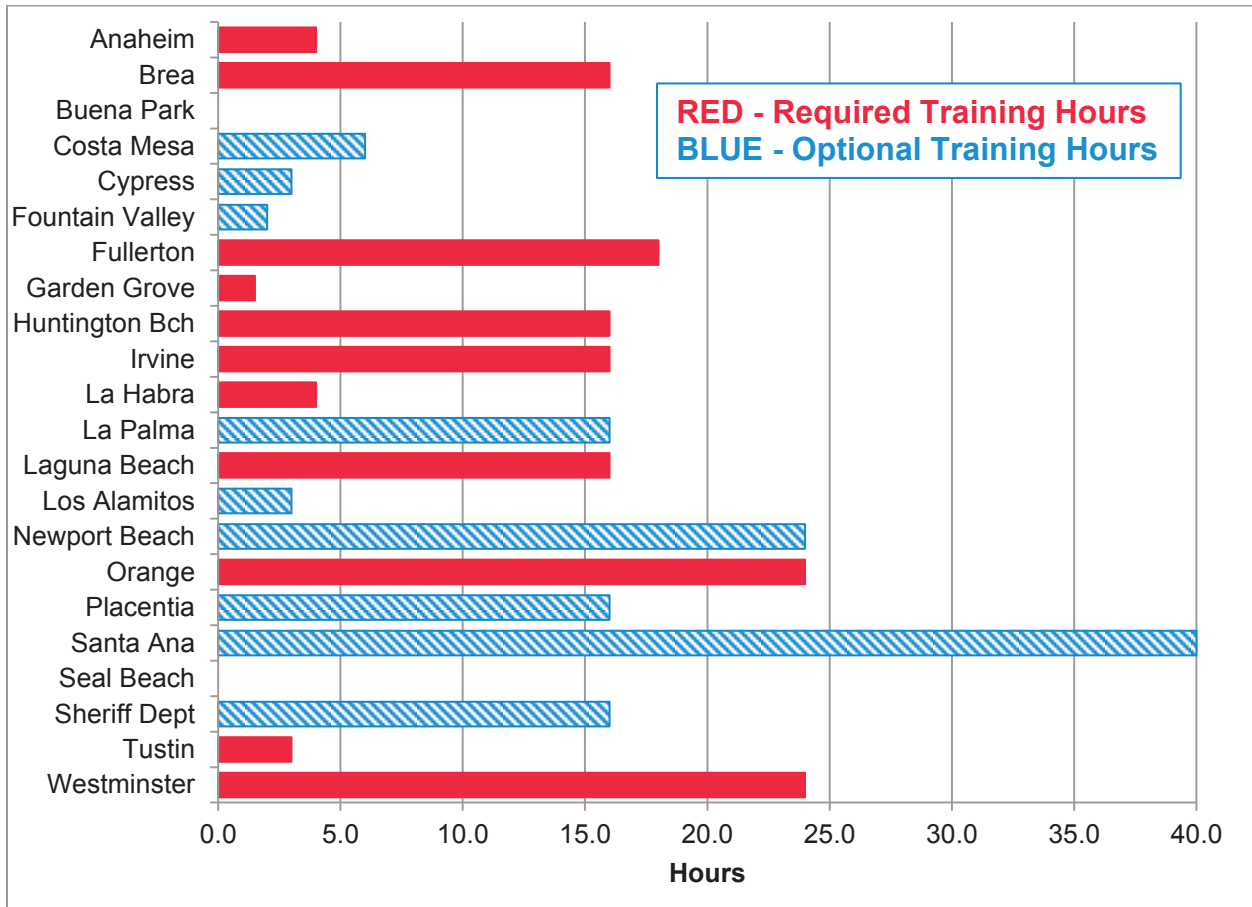
The CIT course taught by Golden West College at the Sheriff's Academy is a 16-hour course, offered in cooperation with the National Alliance on Mental Illness (NAMI) and College Hospital. This course goes well beyond the academy instruction and is modeled after the Memphis program. It contains chapters on understanding stress, 5150 legal issues, suicide by cop, post-traumatic stress disorder, other cognitive disorders such as dementia and developmental disabilities, tactical communication, operational and procedural protocol, designated mental health facilities, community resources, and psychiatric medications.

The Grand Jury has learned that this CIT course has been approved by HCA/BHS and will soon be expanded to a 24-hour course. The additional eight hours will include role-playing responses to mental illness crisis situations using a simulator. However, this course is only optional, not mandatory.

The number of CIT training hours *required* by police agencies is another matter. Only 11 of the 21 police agencies *require* any CIT training. The cities of Orange and Westminster require 24 hours and Fullerton requires 18 hours. The Sheriff's Department offers, but does not require, 16 hours of CIT training.

Still another issue is the number of law enforcement agencies that require that *all* of their deputies or officers receive post-academy mental illness training. Of the 11 agencies that require post-academy CIT training, only *four* police agencies require CIT training for all their sworn officers. (See Figure 5)

Figure 5: Police Agencies Intervention Training



In the Grand Jury’s estimation, CIT training in Orange County is inadequate in three respects, in that: (a) the amount of CIT hours is insufficient; (b) for most of the agencies, CIT training is not mandatory; and (c) at almost all of the agencies, CIT training is not required of all sworn officers. A Senate bill that is presently pending in the California Legislature, SB 11, would require at least 20 additional hours of CIT training in the academy relating to police interaction with the mentally ill. Another Senate bill, SB 29, would *require 40 hours* of post-academy CIT training to help officers recognize, de-escalate, and refer persons with mental illness who are in crisis.

This proposed legislation reflects a growing trend in many California counties and cities and throughout the United States, which is to place more emphasis on training police officers on methods to use in dealing with the mentally ill. Many police agencies in California presently offer and require much more CIT training than is offered or required in Orange County, but this may change. Pursuant to a national Community Oriented Policing Services (COPS) grant awarded to the Major County Sheriffs’ Association, The OC Sheriff was recently appointed to a select nationwide sheriffs’ committee of the Major County Sheriffs’ Association to study and make recommendations regarding training protocols and crisis intervention models of the best practices for diverting the mentally ill from the jails. In addition, on May 19, 2015, the OC

Board of Supervisors adopted a resolution in support of a nationwide initiative to reduce the number of people with mental illnesses in our County jails (Orange, 2015).

Other counties, including Ventura, Los Angeles, and San Diego, already expect and require more of law enforcement. In Alameda County, each police agency has a CIT coordinator and liaison. CIT training consists of a 40-hour course, it is mandatory, and it is required of all police officers. Of course, taking all officers out of service for one week, even if done on a rotational basis, can pose logistical and financial challenges (with overtime costs), but 90% of all officers have received the CIT training to this date.

In Orange County, the City of Orange Police Department and the Westminster Police Departments are shining examples of this more enlightened approach. These two cities require that 100% of its officers receive 24 hours of post-academy, CIT training. In addition, the City of Fullerton has excellent CIT training materials and courses ranging from one to four days that are conducted by a private firm.

The Orange and Santa Ana Police Departments, in conjunction with the Mental Health Association of Orange County and St. Joseph Hospital, have taken the initiative to produce a series of excellent, 30-minute DVDs on how to deal with the mentally ill. These DVDs address real mental health issues faced by officers in the field, feature dramatized, yet realistic reenactments of field encounters based on actual incidents and interviews with experts, police officers, and the mentally ill and their relatives. The titles of these DVDs are as follows: "Close Encounters: Managing Field Encounters with Persons with Mental Illness," "Schizophrenia: Listen to my Voice," "Autism: A Different Way of Viewing the World," "Hoarding: Understanding Their Possessions," and "Bipolar Disorders: Managing the Highs and Lows."

More DVDs, including one on Alzheimer's, are in production and may be released in 2016. These videos have been offered free of charge to all police departments in Orange County at the monthly meetings of the Association of Orange County Sheriff and Police Chiefs and to any other agency that requests them. Many police agencies, mental health facilities, and health care providers in Orange County as well as from all over the nation have availed themselves of this outstanding opportunity to help their personnel gain exceptional insight into these mental disorders on how to recognize and deal with those who display the various symptoms of these mental disturbances.

With regard to training on Laura's Law, responses to the Grand Jury's questionnaire revealed that this training has been rather sporadic and superficial. It has been given to police departments, but only "on demand." In addition, information about Laura's Law has been disseminated through field advisories, protocols, or bulletins. These advisories, protocols, and bulletins may have been distributed to the officers and front line deputies, but there is no assurance that they were read or that any questions concerning the application and implementation of Laura's Law were ever answered.

It would appear that accurate knowledge about the parameters of, and requirements for, Laura's Law is lacking, as demonstrated by the fact that the OC HCA/BHS has received only 23 Laura's Law referrals from police officers in the last 9

months. Further proof is shown by the fact that the majority of respondents stated that they wanted to receive more training on Laura's Law.

Based on responses received from all law enforcement agencies in Orange County, the Grand Jury concluded that police officers and deputy sheriffs have received insufficient training regarding how to deal with and interact with the mentally ill in the field. Moreover, it appears that neither the OCSD nor the 21 police agencies in Orange County are even approaching the prevailing standard among many jurisdictions, which is that 100% of all sworn officers receive *mandatory* post-academy CIT training.

Furthermore, it is apparent that the training received by law enforcement on Laura's Law has been lacking. All but two police agencies remarked that the training on Laura's Law had been insufficient, that they could use more training, and that they would welcome more training. A majority of the police agencies stated that Laura's Law was a valuable new tool in their arsenal for dealing with the mentally ill.

Sufficiency of Police Resources

Dealing with Triage Decisions

Triage decisions after encountering an apparently mentally ill person in the field are difficult. However, the police officer must first decide whether a person fits the 5150 criteria. Police officers call CAT or PET members to assist in the evaluation.

However, even if the person does not presently meet the criteria, he/she may have previously been under a 5150 hold and may be in need of additional treatment. He/she may already have a BHS case manager who has been assisting him to enroll and receive treatment in one of several County mental health programs or who has been monitoring his court-directed involuntary AOT. He/she may be on probation, be under a mental illness conservatorship, or may have recently "eloped" or escaped from the hospital where he was being treated.

The following incident demonstrates this point:

Jason, 28, had been hospitalized at least 15 times since being diagnosed with bipolar disorder in 2009. Police were called after he got into a heated argument with someone, and the police were advised of Jason's prior hospitalizations. When a CIT-trained police officer showed up and asked him nicely to come with him to a hospital, Jason readily complied.

Not long after arriving at the hospital, however, Jason slipped out of the hospital. In a manic state, he walked the streets until he saw a man who he thought had tried to rob him a few years earlier. He attacked the man, who flagged police for help.

Rather than arrest Jason, the two police officers ran a background check on him and discovered that he was missing from the hospital. "Then they took him to the hospital, took off his handcuffs, and just told him to walk into the hospital.

The two officers were CIT trained. They realized the best tactic was not to use physical force.” After so many encounters with non-CIT-trained police officers, Jason considered himself lucky. “[I] [c]ould have a bullet hole,” he said, “or I could have a felony arrest.”
(Emmanuel, 2015)

Consequently, of tremendous assistance to the officer facing this type of triage decision would be an on-line, easily accessible database containing the names of all prior 5150s, 5250s, 5270s, conservatees, persons who have been hospitalized for mental illness, and persons on probation or parole. The County has no such database. The County has neither a “dashboard data” tracking system, such as the one used in San Diego, nor a database such as the one used in Los Angeles.

The Grand Jury is aware of the privacy laws regarding the safeguarding of medical information, such as the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (See also California Welfare and Institution Code section 5328). However, this proposal would not violate any privacy because it would not reveal sensitive medical or mental health information about the 5150. The proposed database would only list the name and prior legal status of the individual, not mental health information such as diagnoses, treatment plans, medications, etc. In any event, HIPAA itself permits the sharing of information when necessary to lessen a serious threat to a person or the public.

Of additional assistance would be a voluntarily created registry to which family or household members have entered the names of the mentally ill person so that the police will know whom to contact. Such a registry would also give advance warning to a police officer who has been dispatched to the home of a mentally ill person. The County has no such database.

The law requires that guns be confiscated from 5150s and prevents guns from being sold to 5150s (California Welfare and Institution Code section 8100-8103; AB 1014). The lesson learned from massacres, rampages, and suicides in Aurora, Colorado; UC Santa Barbara; Tucson, Arizona; Newtown School, Connecticut; Virginia Tech, and Sandy Hook Elementary School is that guns must be kept away from the 5150s. Thus, a database of prior 5150s would be useful to the police in deciding whether to pat down or search the person in the field and in enforcing all laws regarding confiscation of weapons possessed by a mentally ill person. Again, the County has no such database.

Experiences Dealing with CAT and PERT by Law Enforcement

The clinicians on the County’s CAT and PERT teams are supposed to assist police officers in determining whether a person meets 5150 criteria. The Grand Jury discovered, however, that some of these clinicians have not received uniform training regarding the 5150 criteria. As a result, the clinicians cannot be expected to apply uniform 5150 standards or to render uniform assessments in making the 5150 determination, and at least one police agency said that CAT was inconsistent in its application of the criteria.

The following incidents were reported by police agencies to the Grand Jury as examples of perceived inconsistencies in the CAT program. Police report that on one occasion, police units received a call of a mentally unstable son. Upon determining that he met the criteria for a 5150 hold, they notified the PET team and waited for the PET evaluator's arrival. As the investigation continued, it became apparent that the father also clearly met the criteria for a hold. A second call was made to PET. This was approximately 30 minutes after the initial call. Officers were advised that a separate evaluator for the father would be sent.

About 30 minutes later (one hour after the initial call), the evaluator for the father arrived at the scene. The evaluator for the son did not arrive for another 30 minutes—well over one and one-half hours after the initial call. The evaluator for the son was inefficient and tentative, and took an excessive amount of time to handle the evaluation.

The officers asked their watch commander to call HCA. When he called HCA to complain, the excuse was given that the evaluator was new and was still learning. Several months later, the same evaluator responded to another call and handled it in a similar, unacceptable fashion in that she left the officers with the 5150 without providing any updates or information while she disappeared into her vehicle for 20 minutes, acting in an extremely tentative manner, and nearly refusing to issue a 5150 hold on a man who the police officers believed clearly met the criteria.

As another example, one police agency described a scenario wherein a transient who had run out into the lanes of traffic was extremely distraught and agitated. He began yelling at the police, who were doing their best to prevent him from going back into traffic. They requested CAT to evaluate him. When the CAT clinician arrived, she spent only one minute with the transient and told the officer she could not evaluate him because she believed the transient was under the influence of drugs. The officer explained that he was a drug recognition expert and that the transient showed no signs of narcotics use. The clinician then told the officer that she could not evaluate him because he was not "obviously" a 5150, and she was not prepared to deal with the unobvious. The officer informed her that he could handle an "obvious case myself, but that he was asking for her professional expertise. She refused to talk further to the officer, so he called her supervisor, who ultimately convinced her to place the subject on a 5150 hold.

What is more, seven police agencies stated their officers have had differences of opinion with regard to the 5150 evaluation criteria applied by CAT and PERT clinicians. In other words, on one occasion, the police officer would opine, based on his or her prior knowledge of the individual's history and behavior, and based on what he observed before the clinician arrived, that the person fit the 5150 criteria, but the clinician would render a contrary opinion. The clinician would leave after telling the police officer that the officer could go ahead and write the 5150 hold and handle the matter based on his own assessment.

On another occasion, a police agency stated that the CAT clinician chose not to place a hold on an individual who was found lying in the middle of an intersection. The individual had told the police that he wanted to die in what appeared to be suicide.

However, no action was taken by the CAT team, requiring the officer to make the 5150 hold.

On still another occasion, police officers were called about a lone female that had been living in her car for an extended time. Many people were in fear that she would die in her car. Officers discovered rotting food throughout the car and determined she was a danger to herself and was not able to care for herself. The officers contacted OC Adult Protective Services (APS), who believed that the appropriate action would be to call CAT. The initial request to have CAT respond was denied. Only after the officers had called their supervisors did CAT respond. Once CAT arrived, the clinician denied the hold and disagreed with the officers' assessments then left. The APS forensic team responded, agreed with the officers, and accepted the 5150 hold.

Another source of confusion is the wording of section 5150 itself. To meet the criteria, the person must be a danger to himself or to others as a result of a mental disorder. There is *no* requirement, however, that the danger be "imminent."

Correct interpretation of the 5150 criteria is not merely an academic exercise. On one occasion, a mentally ill man held a ten-inch knife to his chest. His family wrested the knife away while he was threatening them. Officers called CAT. When the clinician arrived, two and one-half hours later, he decided that no 5150 hold was necessary. Officers reported believing that the clinician made this determination because the man knew who the president was and said he was not going to hurt himself. Only after the officer threatened to write a detailed report on the clinician's refusal to hold the patient did the clinician write the hold.

In sum, police agencies had problems with CAT because of time between call and arrival, ETS availability, or evaluation criteria. One police agency called CAT "uncooperative," and another agency claimed that CAT actively "discourages" 5150 holds. One police agency went so far as to state that CAT is "a joke."

Another example is illustrative of the problems reported by the police in respect to dealing with CAT. Officers reported that they were called about a female who was attempting to cut her wrists inside a doctor's office. The officers detained the person and believed she qualified for a 5150 hold. They contacted CAT, but CAT declined putting her on a 5150 hold. The officers then transported the female to a mental health clinic in Santa Ana for further treatment. Only four hours later, other officers responded to a call of a woman attempting to hang herself in the area of the clinic. This same woman had earlier tried to cut her wrists. The officers placed a 5150 hold on her and transported her to a hospital.

It appears to the Grand Jury that there are insufficient CAT members to meet the demands of police officers in the field. At least seven different police agencies stated that they had encountered delays in reaching CAT, and had experienced significant delays in waiting for a CAT member to arrive out in the field after the initial call, all of which resulted in officers being delayed from returning to service for several hours. At least one police agency stated that CAT would sometimes merely provide advice over

the telephone rather than send a clinician into the field to assist the officer in evaluating the 5150.

Dealing with PERT

Most police agencies that had an embedded PERT clinician, including the Sheriff's Department, were generally satisfied with the assistance they were receiving. They noted, however, that their assigned PERT clinician only worked Monday through Friday and only from 9:00 AM to 5:00 PM. They indicated that it would be highly preferable to have assigned PERT clinicians 24/7.

Some police agencies and the Sheriff's Department indicated that they need embedded clinicians who are available 24/7, who can interact with the officers and investigators at all levels, and who have their own desk and their own telephone at the police department. The Grand Jury has concluded that there are insufficient PERT clinicians to fulfill various police agencies' requests for an embedded clinician. HCA/BHS has declared that it will assign a PERT member to any city that requests one, but several agencies told the Grand Jury that their requests have not been granted.

In a triage grant application, HCA/BHS has expressed the desire to increase the number of PERT teams from four to nine and to expand the number of CAT staff to meet the needs of the police agencies and of the OC Sheriff's Department. The responses from the police agencies, however, demonstrate that these needs are far from being met.

Dealing with ETS

The ETS Center has remained the same for 30 years. It has only ten beds—the same number of beds that it had 30 years ago. Almost all of the police agencies complained that ETS had too few beds, which, in turn, caused long delays while holding a 5150 in the field or in an emergency room just waiting for an ETS bed to become available.

ETS staff informed the Grand Jury that the BHS would soon be modifying the interior spaces at ETS to increase the capacity to 18 by adding some loungers. Other than that, however, the OC HCA has no plans to expand or improve ETS.

Upon visiting and inspecting ETS on two different occasions, the Grand Jury was told by staff that it was never full or beyond capacity. ETS staff assured the Grand Jury that it never experienced any overcrowding or delays and that it managed to keep everything under control, no matter how high the demand. They denied that they had ever had to turn anyone away for lack of beds or chairs.

The responses to the questionnaire paint a different picture, however. Police agencies responding to the questionnaires overwhelmingly indicated that ETS is too small and inadequate to handle all the 5150s who need to be dropped off at the facility. According to the police, they were very frequently told to transport a 5150 to an emergency room rather than to drop the "client" off at ETS, and if they brought the 5150

directly to ETS, the officers perceived that during the intake process ETS was looking for reasons *not* to admit.

Respondents accused ETS and its supervisors of artificially keeping the number of 5150 admissions low to manage costs and capacity, almost invariably by telling the police to drive the 5150 to a hospital emergency room for medical clearance even if such clearance was unwarranted; i.e., when there was no apparent medical emergency. Moreover, police agencies complained about ETS' refusal to allow officers to drop off 5150s that may have been under the influence of alcohol or drugs, no matter how insignificant that influence might have been. Thus, police agencies stated that ETS rarely accepted patients and discouraged officers from taking patients to ETS, by requiring medical clearance for minor medical issues common among people with mental health issues, such as high blood pressure or diabetes.

Such medical clearances can take six to 20 hours, especially if drugs or alcohol is involved. Keeping a patrol officer out of the field for that length of time greatly affects staffing levels and interferes with the police agency's ability to provide efficient police services not related to mental health issues. Police agencies believe it is OC HCA's responsibility to assist the police in dealing with the mentally ill, not the other way around.

What is more, according to some police agencies, ETS virtually shuts down and refuses to accept additional 5150s when a single patient has become violent and combative. Furthermore, numerous police agencies found a lack of consistency regarding ETS admittance policies and practices, calling them "marginal" and "inconsistent." In addition, police agencies stated that ETS staff at times is non-responsive and even resistant to admissions; it discourages admissions and fails to cooperate with police officers by telling them that there are no available beds at ETS.

The OC HCA does not have a real-time, on-line, empty-bed registry for police officers or CAT/PERT members to see ETS bed availability at a glance. Consequently, police officers and CAT/PERT must resort to calling ETS on the telephone.

According to several of the respondents, ETS was always trying to keep a very "low profile," to "carefully couch" their responses to the police officers' requests, and to "do the least amount possible." Numerous respondents went so far as to characterize ETS' attitude with regard to 5150s as being "someone else's problem" or "the police officer's problem," as if ETS' only responsibility was to "just sit there and direct traffic." Respondents voiced their concern that ETS considered the police to be the "catch-all," whose duty it is to be the repository of the mentally ill.

Another unflattering image of ETS is portrayed by the County itself. In a grant application, the County Health Care Agency asserted that the average wait time for access to a bed at ETS or an inpatient hospital is more than ten hours. The grant application further states that during peak demand periods, the wait time is even higher and can last from two to three days. (Orange County, 2013) This confirms what the Grand Jury learned from the police departments' responses.

Dealing with Transporting the Patient (to ETS or to a Hospital)

The law clearly states that the officer must *not* be required to stay with the 5150 any longer than the time necessary to complete documentation of the factual basis of the 5150 hold, and to transfer the 5150 in a safe and orderly manner (California Welfare and Institution Code, section 5150.2). While a police officer may accompany a combative patient during transport, the law does not require him to do so, provided he makes the proper arrangements with the paramedics to transport the 5150 to ETS or the hospital in a secure manner. The law requires that designated hospitals have appropriate security plans and security officers to maintain a safe environment (Health and Safety Code, section 1257.7, 1257.8).

Therefore, under the law, once a police officer has made proper arrangements for the transport, he may resume his normal duties in the city where he works. This is not the case in Orange County; however. In a majority of the cases, the police officer transports the 5150.

For example, on one occasion, a man was laying on the railroad tracks in an effort to commit suicide. The officer contacted the CAT team. A clinician responded and contacted the suicidal man. The officer then observed the clinician making several phone calls in an unsuccessful attempt to place the suicidal man in a secure facility. The officer finally decided to complete the hold himself and transport the man to a hospital. The officer was forced to remain with the suicidal man inside the crowded emergency room until he could be triaged and transferred to a bed.

To make matters worse, the police officer may have to transport the 5150 a long distance, or in heavy traffic, or both. ETS is located in Santa Ana, so officers driving from the outlying areas of the County must drive long distances. And if the officer is told to transport the 5150 to a hospital to obtain medical clearance—which happens more often than not—he might try the nearest hospital, but usually would travel farther to a hospital that would be more receptive.

Dealing with the Absence of In-Field Medical Clearance Authority

Thus, after an officer or a CAT/PERT clinician has made a 5150 hold in the field, the officer or clinician must either transport the patient to the nearest designated hospital (for medical clearance) or call ETS to inquire if it will accept the hold, even if the hold has no apparent need of being medically cleared in an emergency room. The industry standard in other counties, however, is for the police officer or paramedic to conduct the medical clearance in the field, in accordance with field screening protocols adopted by a county's Emergency Medical Services (EMS). If the patient meets the criteria under the medical clearance protocols, the industry standard permits transporting the patient directly to the crisis stabilization center, and dictates that once the patient arrives at that facility the field medical assessment must be confirmed.

HCA/BHS has not written or instituted an in-the-field medical clearance protocol for the County. To date, there is no HCA/BHS policy that would permit medical triage or medical clearance in the field. In addition, because OC ETS does not even have a

limited emergency room designation, there are no medical personnel at ETS who can confirm an in-the-field medical clearance.

Therefore, in the vast majority of cases, the police officer must transport the patient to the nearest hospital emergency room. Respondents to the questionnaire overwhelmingly stated that it was a waste of the police officer's time to transport the patient to a hospital and to wait with the patient in the emergency room for lengthy periods. The transport could just as easily be conducted by paramedics or by ambulance, thereby allowing the police officer to return to his regular duties.

Dealing with Medical Clearance in Hospitals

A majority of the responding police agencies complained of the long delays at hospital emergency rooms. Respondents to the questionnaires claimed that their officers regularly had to waste from two to 28 hours with a 5150 client in an emergency room, either awaiting stabilization and medical clearance or awaiting confirmation from ETS that ETS had a bed available for the patient after medical clearance was obtained. For example, when one officer took a 5150 patient to a hospital, he was told he could be waiting up to 26 hours for a bed to open.

Even after the patient has been medically cleared, which could take many hours, the police officer must wait many more hours to transport the patient to ETS or to a contract hospital if ETS does not have a bed available.

When a hospital's emergency room is completely full or overloaded by medical patients and 5150 patients, 911 dispatchers are informed and are told to divert all paramedics and ambulances to other hospitals, for the next two hours. Diversion rates show that each emergency room in Orange County must divert new patients an average of once a day. Diversion rate statistics also show that during these periods when emergency rooms have reached full capacity and cannot absorb additional patients for the next two hours; about one-half of the patients in the emergency room that caused the diversion of new patients were 5150 patients.

Thus, the presence of 5150 patients in emergency rooms for medical clearance purposes is causing a series of problems. First, it places the medical staff and the other patients in danger. Second, it is diverting staff's attention away from handling medical emergencies. Third, it is causing the new medical emergencies to be redirected to other hospitals when the emergency room reaches a capacity level.

In a grant application, HCA/BHS disclosed the following facts concerning its present system. The average wait time for a 5150 to see a mobile crisis evaluation team member (CAT or PET) in the emergency room is consistently over four hours; at night and peak times, it exceeds eight hours. Increasingly, hospitals are complaining that their emergency room personnel are at risk of physical injury and are becoming injured as a result of delays in treatment for psychiatric patients. The scarcity of capacity and the volume of 5150s being taken to emergency rooms consistently leads to extended delays for 5150s to be treated in the most restrictive and expensive level of care. (Orange County, 2013)

Clearly, the greatest concern to a police officer in dealing with a mentally ill person in the field is where to take the patient for evaluation and treatment. The time that is required for the officer to stand by with the patient in the emergency room waiting area can be problematic and unsafe for the officer, hospital staff, and other citizens. The admitting procedures, coupled with the frequent shortage of beds, turn the police officer into a caregiver for upwards of three or more hours at a time, or much longer.

Dealing with the Transfer

Once the 5150 has been medically cleared in the hospital emergency room, he must then be transported to ETS or to a contract hospital. Therefore, the police officer, the clinician, or someone at the hospital has to call ETS to see if a bed is available. If someone has arrived from PET, however, the person can take the 5150 directly to a contract hospital.

Dealing with a Premature Release from ETS

As noted above, the 5150 must be released as soon as he has been stabilized. A problem arises, however, when ETS staff incorrectly assesses the 5150's condition and prematurely discharges him. Premature or ill-advised releases of a 5150 can place extensive burdens on police agencies and have deadly consequences.

For example, on one occasion, a man was discharged from a 5150 hold after less than 12 hours. Shortly thereafter, he walked into a flood control channel and killed a transient by striking him in the head with a rock. When questioned by the police, the man stated that he believed the transient was the devil.

Numerous police agencies have encountered a disturbing lack of consistency regarding ETS discharge policies and practices. Indeed, many police agencies stated that ETS prematurely releases some 5150s before they are completely stabilized and while they are still posing a danger to self or a threat to others.

Another example serves to illustrate the point. Responding officers found a man who had armed himself with a machete and was swinging it in a threatening manner. They determined that he was a danger, disarmed him, and transported him to ETS on a 5150 hold. Only five hours later, officers responded to a call where the same man was destroying the interior of his mother's house. The officers attempted to contact ETS but did not receive a return call. Officers were forced to arrest him for felony vandalism and transported him to jail for booking.

A Broken System

As noted, a high-ranking County official has declared that the County is "very deficient" in terms of dealing with the mentally ill. This assessment is echoed resoundingly by the two stakeholder groups that interface with the County Health Care Agency on a daily basis to triage and treat the mentally ill: the police agencies and the hospitals. All seem to agree that the County's crisis intervention system is fragmented and disjointed in that the County is not working cooperatively with police and hospitals to obtain the optimal system of triage and treatment of the mentally ill.

Many of the questionnaire respondents from the various police agencies in Orange County characterized the County's crisis intervention system as itself being in a state of crisis. The agencies adamantly asserted that the Health Care Agency's current system was "extremely inefficient and ineffective," "not responsive," "very poor," "marginal and inconsistent," "unacceptable," "totally inadequate," "broken," and a "failed" system meriting "an F." Numerous respondents were at a loss to explain why the County has not seen fit to overhaul its crisis intervention and triage system and replace it with a system that is modeled after the new systems that are being installed in other counties across the state.

One police agency provided the following assessment, which reflects how many of the other agencies evaluated the County's crisis intervention system:

The present system is neither efficient nor effective with regard to the immediate medical and psychiatric needs of the patients, and it has little regard for the time expended by first responders who are tasked with stabilizing and obtaining treatment for those clients in crisis. There is lack of treatment capacity in the system, which pushes clients (along with our police officers) to busy emergency rooms, where they sometimes languish for hours. This is not only inefficient, but also unsafe, as patients with severe mental illness can present a danger to themselves and others when they are not promptly stabilized. This also causes a drain on police resources, because it takes one or more officers out of service for hours when they could be on the streets responding to other emergencies (Police agency respondent, personal communication, April 27, 2015).

An expert in the field of crisis intervention has noted that Orange County lags far behind other counties in the state and across the nation, who have opted to follow an acute-psychiatric-and-stabilization model, called a Psychiatric Emergency System (PES) that was proposed and established several years ago in Memphis, Tennessee. The nationally known Memphis model, which includes a template for specialized first-responder Crisis Intervention Teams (CIT) that accompany law enforcement into the field, has been replicated throughout the California with great success, including Alameda County, Santa Clara County, Marin County, and Ventura County.

The Memphis Crisis Intervention Team is an innovative police-based first responder program that provides crisis intervention training. CIT works in partnership with those in the county health care agency to provide very efficient crisis response times and to increase pre-arrest jail diversion. Performance-outcome research has shown CIT to be effective in developing positive perceptions and increased confidence among police officers and in decreasing police-officer injury rates.

The Hospital Association of Southern California (HASC) issued a press release on January 8, 2014, in which it declared, "There exists an *urgent* need to expand and improve response times for mental health patients experiencing psychiatric emergencies in Orange County." HASC went on to claim, "There is a *great* need to expedite treatment for mental health patients in the most appropriate, least restrictive care setting, avoiding hospitalization whenever possible" (Press release, Jan. 8, 2014).

Fixing the System

Infrastructure Improvements

HCA/BHS has seemingly begun to recognize that its present system is inadequate and that its care system needs improvements that will expedite crisis intervention, stabilization, and treatment for patients in psychiatric crisis in the most appropriate care setting, bypassing hospital emergency rooms when not truly needed. The County has taken a major step in that direction by applying for two grants this year to improve its crisis intervention system. In the grant applications, OC HCA/BHS admits that ETS is too small, and that another ETS is badly needed in South Orange County. Moreover, in the grant proposals, HCA/BHS admits that the wait time for a 5150 to be evaluated is too long and requests grant funds to increase the size and quality of its triage staff and to improve its mobile response system.

Furthermore, the County has recently taken another major step forward by partnering with HASC to hire an independent, outside consultant to do the following:

- assess the County's present psychiatric emergency/crisis response system
- evaluate successful models of PES care that are already in place in California for their applicability in Orange County;
- determine the optimal number and capacity of the PES facilities that would be required in Orange County to meet the needs, based upon known and projected volumes and residence of persons facing psychiatric emergencies;
- delineate the field triage functions of the police, EMS, clinicians, and other protocols and policies needed to support the most effective implementation of a new response model and a new PES model;
- list the functions to be performed by the PES facilities, including medical screening, crisis intervention, case management, and referral to post-discharge services;
- describe the pros and cons of hospital affiliation;
- make recommendations regarding business model, i.e., County owned and operated, County owned, with operations contracted out; privately owned and operated, or a combination of County and private funding; and
- conduct an assessment of the presently available post-discharge services and provide recommendations for additional services to support the recommended changes to the ETS facility and to any new PES facilities.

Leadership Improvement

HCA/BHS does not appear to have a cooperative relationship with the other agencies and licensed service providers with whom it must interface to triage and treat the 5150s. It does not appear to value the other members of the Mental Health Services Act Local Oversight Committee (Steering Committee) as collaborative partners, active participants, and important stakeholders in a joint enterprise of crisis intervention. The

HCA/BHS has failed to (a) provide proactive, aggressive leadership, (b) construct or lease new crisis intervention facilities throughout the county, and (c) develop a more cooperative relationship with police agencies and hospitals. The HCA/BHS has missed an opportunity to demonstrate to the police and hospitals that it understands the problems they are facing and wants to alleviate those problems.

Organizational Improvement

Moreover, a mechanism that would foster and encourage positive, constructive criticism of the present system is lacking. The Grand Jury has studied other models that include a multi-disciplinary forensic team and stakeholder working group, consisting of all the chiefs, directors, and coordinators of all agencies, including police agencies, hospitals, ambulance services, 911 dispatchers, the district attorney, the public defender, the probation department, the jail liaison, mental health providers, NAMI representatives, actual consumers, and the courts. The most important aspect of such a collaborative task force is that all participants have equal standing and feel free to provide input, suggestions, and comments.

The County's HCA/BHS already has the Steering Committee, which includes representatives from law enforcement, the District Attorney's Office, the Public Defender's Office, HASC, the Juvenile Court, and the Probation Department. Although HASC is a member of the Steering Committee, there is no direct representation from individual hospitals on this committee.

Psychiatric Emergency System: A Better Approach

The new, cutting-edge model that is recognized by experts interviewed during this investigation as the ideal system to triage the dangerously mentally ill is the Psychiatric Emergency System (PES). PES programs are designed to provide accessible, professional, and cost-effective psychiatric and medical evaluations to individuals in psychiatric crisis, to stabilize the clients on site, and to avoid psychiatric hospitalization whenever possible. A PES team provides 24/7 emergency services to all walk-ins, police-initiated evaluations, and crisis phone services. The reason a PES facility can conduct medical screening and provide basic primary medical care is that it has medical staff and laboratory testing services (Zeller, 2013).

Thus, a PES team provides both medical and psychiatric evaluation and treatment. This obviates the need to transport the 5150 to a hospital emergency room, where the 5150 could languish for hours and even days before receiving the psychiatric evaluation that he needs. The PES program calls for treating the patient in the least restrictive setting possible and then, when he is completely stabilized, releasing him/her with a solid aftercare plan, including follow-up appointments, medication information and prescriptions, and strategies to help the person avoid crises in the future (Zeller, 2013).

The outdated concept that most acute psychiatric care requires inpatient hospitalization has been replaced by the more modern concept of confronting the problem head on by treating patients at a specialized psychiatric emergency center. The fundamental concept is that most psychiatric emergencies can be treated to the point of

stability and discharge in less than 24 hours. Thus, considering inpatient hospitalization as the only option is a tremendous waste of resources (Zeller, 2013).

What people in crisis need is immediate help, not sitting for hours untreated in an emergency room while already overwhelmed staff members call around to arrange a multiple-day hospital stay. Thus, using a PES decreases emergency room boarding times by over 80% and reduces the need for psychiatric hospitalizations by up to 75%. What is more, the costs of all the care in the PES is less per patient than the cost of the typical boarding time in an emergency room alone—not to mention the thousands of dollars more saved from avoiding a psychiatric hospitalization (Zeller, 2013).

Alternative Systems Nationwide

The Grand Jury has learned that many cities and counties throughout the nation are developing or revamping their crisis intervention systems to deal with the increasingly problem of how to assist the police in dealing with the mentally ill in the field. Some of the more progressive or cutting edge psychiatric evaluation and stabilization systems are now found in Portland, Oregon; Ithaca, New York; Boston, Massachusetts; Seattle, Washington; Denver, Colorado; Grand Rapids, Michigan; Tucson, Arizona; San Antonio, Texas; and Albuquerque, New Mexico.

Alternative Systems in the State

Los Angeles County has already taken aggressive steps to deploy a highly regarded mobile crisis co-response system with a System-Wide Mental Assessment Response Teams (SMART) that are similar to OC MHS's CAT and PET teams, but which pair many more teams of CIT-trained police officers with embedded mental health clinicians to enable 24/7 coverage. In addition, Los Angeles County has installed a Sequential Intercept Model and Mapping System to triage, track, and divert the mentally ill from the criminal justice system³. Moreover, Los Angeles County and San Diego County have crisis intervention and stabilization PES centers which are run by Exodus Recovery, Inc. Sacramento, California (Exodus 2015).

Los Angeles County recently approved a major expansion of its PES crisis center. The Board of Supervisors voted to use \$40.9 million in state funding to open three new PES drop-off facilities, "where police can bring people undergoing mental health crises instead of taking them to overcrowded emergency rooms or jail" (Sewell, November 12, 2014). A consultant report commissioned by the Los Angeles District Attorney's task force had called for more crisis response teams and more drop-off centers because, "sadly, it's often more time-efficient for law enforcement to book an individual into jail on a minor charge . . . rather than spend many hours waiting in an emergency room for the individual to be seen" (Sewell, November 12, 2014).

Sacramento County recently approved an increase in spending for mental health care. The county's health care agency stated that it wanted to reduce the spiraling cost of treating the mentally ill in hospitals. The Sacramento County Board of Supervisors voted to spend \$13.4 million to expand the county's existing crisis stabilization center and to construct *three* new 15-bed crisis intervention centers.

The Alameda Model

Although other counties in the California have established noteworthy county-run PES systems and facilities, the best one in the estimation of the Grand Jury is Alameda County Health Systems Medical Center's John George Psychiatric Hospital in San Leandro, California, also known as the "Alameda" facility. The Grand Jury considers the Alameda model to be the "gold standard" among PES crisis intervention systems in the State. It provides psychiatric emergency and acute care services to adults experiencing severe and disabling mental illnesses and treats all who seek care regardless of their economic or social status.

Opened in 1992, the Alameda facility was authorized by Alameda County's Behavioral Health Care Services as a designated facility for 5150s. Its qualified, multidisciplinary team of mental health professionals provides patient-centered care for nearly 100% of all acute psychiatric emergencies in Alameda County. It also provides psychiatric evaluation and treatment to patients arriving voluntarily.

Members of the Grand Jury visited and inspected the Alameda facility and were impressed with the multi-disciplinary staff's skill in the diagnosis and evaluation of patients with acute psychiatric illnesses. The facility is housed in an attractive, wide-open, and beautifully landscaped setting with many windows looking out to the hillside or the spacious patio.

A local health care professional told the Grand Jury that representatives from HCA had visited the Alameda PES and reported they could not support such a model because it appeared that patients were lying around everywhere looking like they were in a drugged stupor, instead of receiving clinically appropriate care (Personal communication, June 3, 2015).

These comments prompted an onsite visit to Alameda County by the Grand Jury. What the Grand Jury members saw was a very large, brightly lit wide-open area, where 44 people were lying or sitting in "sleeper chairs" (chairs that can be opened up for full recline). Everyone seemed relaxed -- from doctors and nurses in street clothes-- to the patients waiting for their medications to take effect. In addition, there were three rooms where people who wanted or needed isolation could stay, but no one was isolated during the time the Grand Jury members were there. The PES, unlike Orange County's ETS, did not look like a hospital--with patients in beds behind closed doors, but who is to say that the more hospital-like environment is more appropriate for the stabilization of the mentally ill than a less restrictive, more home-like atmosphere?

The Grand Jury observed four things that seemed clinically appropriate. First, two patients were brought in on gurneys by ambulances, immediately triaged at the door, then taken into private consulting rooms for assessment by the psychiatric staff. Secondly, there was a medical doctor's examining room office set up within the PES with the necessary equipment to provide medical screening exams. Third, there was a psychiatric evaluation area (in clear sight of the staff) where patients could be evaluated by the on-staff psychiatrist before discharge. Lastly, nurses were not dressed in scrubs

or uniforms. There was one nurse assigned to no more than six patients, and every patient knew who his nurse was at all times.

The Alameda PES (a part of John George Psychiatric Hospital) is a Dedicated Emergency Department (DED) that follows the clinical requirements set up by Federal Emergency Medical Treatment and Labor Act (also known as EMTALA) and has a relationship with a licensed hospital. The OC ETS, not being designated as a DED or licensed to a hospital, has no such requirements. Therefore, the Alameda PES, unlike the OC ETS, can handle limited medical screening without a need to first transport the patient to a hospital emergency room.

The Alameda system is noteworthy and remarkable because of the following characteristics that distinguish it from Orange County’s outdated model:

- It provides for initial medical clearance to be conducted in the field by CIT-trained EMS personnel, rather than in a hospital emergency room.
- It provides for CIT-trained EMS personnel (special mental health transport) to conduct all transports of 5150s via ambulance to the PES facility or hospital.
- It enables the police officer to remain in the field after the 5150 has been placed in the ambulance, rather than having to drive to a hospital.
- The average wait time for the 5150 to begin receiving treatment after his arrival at the PES facility is 19 *minutes*, rather than ten hours.
- It has 80 licensed beds/sleeper chairs, rather than 10 beds and 5 recliners.
- It serves up to 1,500 patients per month, rather than only 315.
- It has a lab and can handle limited medical clearances.

The Alameda facility is a leader in the use of evidence-based practice and data analytics to inform and formulate effective care decisions and strategies. It has what the HCA/BHS does not have and offers what the HCA/BHS cannot offer. Table 1 graphically illustrates the differences between Orange County ETS and Alameda County PES.

Table 1: Comparison of County Crisis Intervention Systems

	Orange County	Alameda County
Population	3,147,655	1,594,569
Facility Type	Evaluation and Treatment Services (ETS) -Established in 1970's	Psychiatric Emergency Services (PES) -Established 1992
Crisis Beds	10 beds, 5 recliners, 2 seclusion rooms	80 licensed beds/sleeper chairs 3 seclusion rooms

	Orange County	Alameda County
Staffing	1 Psychiatrist 24/7 1 Registered Nurse 1-2 Mental Health Specialists 1 Social Work Intern No Security Guards	1-5 Psychiatrists 24/7 Several Registered Nurses Psychologist Licensed Social Workers 2-3 Security Guards 24/7 Pharmacist 1-2 Medical Doctors Chaplain On Request P/T Occupational Therapist
Patients seen per month	310-315	1,200-1,500
Patient Source:		
Ambulance	70%	80%
Police	15%	0%–
Walk-in	5%	20%
Other (CAT, clinics, jail, etc.)	10%	0%
Size of Facility	4600 sq. ft.	6115 sq. ft.
Wait room seats	6	14
Average time between police contact and treatment	10 minutes at ETS, but 70% go to hospital ER first; Could be 10 hours or 2-3 days until mental treatment (per HCA/BHS Grant application)	Varies per triage designation at PES: Immediate, 15 minutes, or 30 minutes 30% go to hospital first. These return to PES within average of 4 hours.
Acceptance Criteria	Anyone over 18 years Indigent or Medi-Cal only Medically cleared by designated hospital No alcohol or drugs	Anyone over 18 years Assessed by EMT onsite Brought by ambulance PES does screening onsite Low-level drugs or alcohol ok
Facility Appearance	Hard to find with locked entrance Patients assigned to hospital-like rooms No windows or common area Staff sees clients in their rooms Institutional atmosphere	Easy to find Open, welcoming lobby Patients relax in common area on sleeper chairs Airy, community atmosphere Staff and patients mingle.
Admittance stats		
July '13–Jul '14	3,630	13,249
July '14–Mar '15	2,735	12,910
Medical Clearance	No medical clearance in field Requires ER evaluation at designated hospitals.	Dedicated Emergency Department Does own medical screening exams Only transports to hospital if

	Orange County	Alameda County
		no ability to treat at PES
Funding	Orange County Health Care Agency/Behavioral Health Services	Alameda County Behavioral Health Care Service
Police 5150 procedure	Police calls CAT; Police or CAT writes 5150; Police takes to ETS or hospital ER and stays till client is admitted; Officer can be off patrol for many hours	Police calls county-contracted Emergency Medical Service; Emergency Medical Tech assesses and transports to licensed hospital or PES; Officer free to continue patrol
Criteria for transport to acute hospital	No written criteria All patients evaluated individually Need to be medically screened Alcohol or drugs possibly in system	Health Metrics: BP over 190/110 Pulse over 120 Glucose under 60 mg/dl Unable to treat at PES

(Grand Jury, 2015)

Help is on the Way

In December 2014, HASC and OC applied for two grants: a PES triage planning and staffing grant, and a PES facility construction grant. The grant submissions culminated weeks of strategic, collaborative discussions that were facilitated by HASC for hospitals and the County. The Emergency Medical Care Advisory Committee of the County sent a letter to the OC Board of Supervisors in support of the PES initiative.

Only the triage planning and staffing application was granted. The PES facility construction grant application was denied for failure to provide sufficient details about the proposed facility. To cure this—in anticipation of an opportunity to apply again for a PES facility construction grant—HASC decided to send out requests for proposals for a PES study that would evaluate the need for, and feasibility of establishing, one or more PES facilities in OC. OC HCA and the County Medical Association have agreed to help fund the independent performance audit and study.

Finally, Laura’s Law will be the impetus for OC HCA/BHS to concentrate on how best to assist the severely mentally ill after their release from jail, ETS, or a hospital. If upon discharge, they fail to seek voluntary treatment or to self-medicate, they will relapse or recidivate, once again spinning in the same revolving door that will lead to another crisis in the streets. Prompt follow-up with an outpatient mental health provider after discharge is important to maintain continuity of care and to prevent relapse or re-hospitalization. This can be accomplished through AOT.

The Ideal Solution

Almost all of the police agencies have insisted that there should be “multiple” PES facilities in Orange County. They maintained that they should have “plenty of beds” and should be placed in “several locations.” The police agencies stated that there should be multiple PES facilities to improve capacity and ease of transportation.

Further, police agencies and hospital administrators that the Grand Jury interviewed stated that the County needs stand-alone, emergency stabilization drop-off centers, with medical and psychiatric staff, to relieve the burdens placed on these two principal stakeholders: the police and the emergency rooms. Each PES would ideally be adjacent to, or in very close proximity to, a hospital with a large emergency room linked under a licensed relationship (Personal communication, June 12, 2015).

An ideal solution, as stated by Alameda County law enforcement executives, includes having ambulance personnel transport all of the 5150s to the nearest PES. The 911 dispatchers receive CIT training so they will know whether to send the special mobile evaluation or mental response team to the scene and whether to send the CIT-trained ambulance company to the scene. The ambulance personnel receive CIT training in how to handle and triage the mentally ill and how to safely transport them, with appropriate use of restraints. This allows police officers to remain in the field and return to service immediately upon the ambulance’s departure.

Laura’s Law

In addition, the importance of Laura’s Law as the last piece of the puzzle cannot be overemphasized.

What is really needed is long-term care for months or years. We need to be able to set up a system where we follow the mentally ill back into the community, we follow their families, we make sure they have a safety net and that somebody’s watching them and monitoring them. If they’re not hooked into the [assisted outpatient treatment] system that’s watching them, taking care of them, then we will have problems on our hands. There’s really no place to go *after* the hospital, so the mentally ill end up coming back home, or going back to the streets, right where the situation started. And you know, the police officers on the street and psychiatrists in the hospital will say, ‘You’re right. The system is broken.’
(Pelley, 2014)

As noted above, the County “went live” with Laura’s Law (AOT) on October 1, 2014. The County’s recent implementation of AOT has gotten off to a good start. It has led to a surprising number of voluntary enrollments.

As of June 8, 2015, the total number of patients linked to voluntary mental health programs was 45. In other words, while the Outreach and Engagement Team was screening these individuals for AOT, they decided to accept voluntary services. Thirty-two cases are still open, and five filed petitions have resulted in negotiated settlements approved by the superior court. Only a single AOT petition has been set for a hearing.

The success of Laura’s Law will depend on three things. First, it must be properly implemented and well-defended in the courts. Second, aggressive action must be taken to find and identify those individuals who meet the criteria of Laura’s Law. Third, its performance metrics and cost effectiveness must be accurately measured and compared with meaningful benchmarks.

Defending Its Constitutionality

Although a Sacramento-based civil rights advocacy group—Disability Rights California—has threatened to file a lawsuit attacking the constitutionality of Laura’s Law, no such action has been filed in Orange County to date. Moreover, legal experts opine that it will withstand such an attack because (a) the candidate may not be forced to sign a release of his medical records; (b) the patient can be ordered to take his medication, but cannot be forced to do so; and (c) the patient can walk away from the AOT, in which case the only sanction is the bringing of a new petition. Furthermore, New York’s Kendra’s Law, which was patterned after Laura’s Law, has already passed constitutional muster in the courts.²

The Grand Jury found that the County does not meticulously track all the negotiated settlements with AOT petitions and all the voluntary linkages following AOT referrals. This failure to track all settlements and voluntary linkages may adversely impact the ability to defend the constitutionality of Laura’s law as applied.

Locating its Candidates

The County HCA/BHS has established a Laura’s Law Outreach and Engagement Team, consisting of social workers, marriage and family counselors, and psychologists, to conduct investigations when referrals are made. If the referral meets the criteria regarding prior hospitalizations and prior acts of violence, and if he refuses voluntary treatment, a psychological assessment is conducted to ascertain whether he has a mental disorder and whether he is deteriorating. However, this “outreach” program does not really reach out; it merely investigates referrals from family members, hospitals, jails, police officers, and law probation officers. HCA/BHS is merely *waiting* for referrals.

The County has failed to find and identify all possible candidates who may qualify for AOT under Laura’s Law. After all, the County set aside \$4.4 million to treat about 120 severely mentally ill persons during the 2014-15 fiscal year, but of the 317 Laura’s Law referrals received by HCA/BHS, it has been able to link only 75 persons to voluntary services and to enroll only five into AOT through negotiated settlements approved by the superior court.

HCA/BHS found that 112 referrals did not qualify under the criteria of Laura’s Law. It has 45 open cases that are under investigation. The remainder of the 317 referrals—80—are severely mentally ill people who could not be helped by HCA/BHS—not because they did not qualify—but because they could not be located (Personal communication, May 14, 2015).

This again demonstrates the efficacy of a 5150 tracking system and database for use by the police agencies, members of CAT, clinicians at ETS/PES, staff at the County

Jail, probation officers, and hospitals. In the alternative, County HCA could comb through the 5150 files that it and the hospitals have compiled over the last few years to make an alphabetical list that could be used to compare with lists of arrestees, jail inmates, and probationers. Orange County does not have relevant data about 5150s that are migrating from an adjoining county.

Another major issue is the degree to which the mentally ill are left to fend for themselves upon their release from jail, ETS/PES, or a hospital. Without an appropriate aftercare plan and a secure safety net, they are left to their own devices and may immediately deteriorate, relapse, and become dangerous if they do not take their medication. It is at this juncture that they need to be linked immediately and seamlessly with the County's mental health services, including assisted outpatient treatment (Laura's Law), either through the probation officer, the mental health courts, the HCA/BHS case worker, or the conservator.

Measuring its Success

Establishment of benchmarks is important in order to evaluate accurately the effectiveness and efficiency of Laura's Law. To assess performance outcomes, the law requires that all key performance indicators be measured precisely and scrupulously against these benchmarks. It appears, however, that the County has failed to establish countywide benchmarks for all severely mentally ill who may benefit from the implementation of Laura's Law.

Because Laura's Law is funded by the state, the law itself mandates that counties measure and report to the State Department of Health Care Services certain markers and indicators by May 31 of each year (California Welfare and Institution Code, section 5348) However, since the County does not yet have a single, court-ordered AOT in the system, it was able to obtain a one-time exemption from the report-filing requirement.

Next year (2016), when the County prepares its report for filing, the law requires that HCA/BHS include the following data markers with regard to all persons in court-ordered AOT:

- Reductions in homelessness and in hospitalizations
- Reductions in police involvement and police contacts
- Number of persons served by AOT, and, of those, the number who maintain housing and maintain contact with the treatment system
- Reductions in arrests and incarcerations
- Number of AOT persons participating in employment services programs
- Reductions in days of hospitalization
- Adherence to prescribed treatment
- Other indicators of successful engagement
- Victimization of persons in the AOT program
- Violent behavior by persons in the AOT program
- Substance abuse by persons in the AOT program
- Type, intensity, and frequency of treatment of persons in the program

- Extent to which enforcement mechanisms are used by the AOG program
- Social functioning of person in the AOT program
- Skills in independent living of persons in the program
- Satisfaction with program services both by those receiving them and by their families

(California Welfare and Institution Code, section 5348)

Those indicia not specifically included are the following: (1) emergency calls; (2) diversion referrals; (3) threats; (4) crisis interventions (apart from police contact); (5) suicides; (6) homicides; and (7) conservatorships. Moreover, the BHS Adult and Older Adult Performance Outcome Department has indicated that it has not established benchmarks for comparison between pre-Laura's Law and post-Laura's Law statistics. Furthermore, BHS has not standardized the program data for easy comparison.

It is hard to understand how the HCA/BHS plans to track the effectiveness of Laura's Law in its Adult and Older Adult Performance Outcome Department (AAOPOD). HCA/BHS has a database system that provides electronic health record of all its clients, but it does not have an integrated, centralized, standardized database that would provide "snapshot" information at a glance regarding reductions in police contacts, arrests, or incarcerations. The same holds true for homelessness, hospitalizations, and unemployment data. In addition, HCA/BHS does not have a web-based data system or dashboard to track outpatient volumes, ETS volumes, high utilizers, community of origin, frequency of outpatient treatment, length of successful engagement, number of psychiatric visits, enrollment in voluntary programs, court appearances, and dispositions.

To prepare to provide performance measurements regarding its implementation of Laura's Law, HCA has issued a Request for Proposals (RFP) for the provision of technical assistance and development of a plan to evaluate the AOT program. The RFP's scope of work calls for an independent evaluator to measure the performance indicators and conduct a statistical analysis of the impact of Laura's Law. In addition, the scope of work includes a calculation of the cost-effectiveness of Laura's Law.

However, the scope of work fails to include vital categories and domains that would track single events and separate them from the multiple events by the same individuals. For instance, a valuable statistic to track would be to compare the recidivism rate (1) to the frequency of contacts by the case manager or personal service coordinator, (2) to the caseload size of the case manager, (3) to the frequency and consistency of medication, and (4) to the frequency of psychiatric visits.

In addition, it remains to be seen how the County will accurately measure the cost effectiveness of Laura's Law. The county has indicated that it has no intention to first establish a pre-AOT baseline and then track the cost of AOT versus the costs of emergency responses, arrests, incarcerations, ETS handling, emergency room handling, 5150 evaluations, 5150 holds, 5250 holds, 5270 holds, hospitalizations, and conservatorships. It does not plan to measure the impact of AOT on the District Attorney's Office, the Public Defender's Office, the Probation Department, and the

Superior Court. The Grand Jury found that the Board of Supervisors expects this type of information.

Furthermore, Orange County has prided itself in data-driven decision-making and in measuring performance outcomes that not only reflect bare statistics, but also meaningful trends and cross analysis of data. However, it is not clear that HCA/BHS is prepared to establish a vigorous, robust program to establish metrics and benchmarks, collect data, compare statistics, measure trends, and track the performance outcomes of the implementation of Laura's Law. As reportedly stated by former Supervisor Pat Bates, "We need to have strong performance metrics in this program so we know we'll have outcomes." (Gerda, 2014)

There is yet another important reason to track the success of Laura's Law, including the high number of voluntary enrollments and negotiated settlements. As alluded to above, a few police agencies have expressed their doubts that Laura's Law will have a positive impact in Orange County because it has "no teeth," i.e., no forced medication and no sanctions for non-compliance. As noted, however, Laura's Law and Kendra's Law have met with singular success, based on the "black robe effect," leading to an extremely high number of voluntary enrollments.

Nevertheless, this police agency attitude toward a perceived ineffectiveness of Laura's Law might have a deleterious effect on whether the police agencies seek further training on how to implement Laura's Law and on whether they make referrals of all potential candidates. A reduction in training and referrals, in turn, would tend to lower the effectiveness and success of Laura's Law. This would inevitably result in a self-fulfilling prophecy.

Therefore, the HCA has not publicized Laura's Law sufficiently throughout the County and has not provided adequate training to all deputy sheriffs and police officers regarding its implementation. The HCA has not instructed all police agencies regarding the qualifying criteria for AOT. Laura's Law is the missing component that was created to fill the gap in the treatment continuum between a previously violent 5150's release and his relapse, and it will not work unless all stakeholders work together to ensure and measure its success.

Time Matters

It may appear trivial, but the time taken to detain, evaluate, transport, medically clear, and stabilize an individual suffering from a mental disorder that is causing him to have suicidal thoughts or to want to hurt someone else is crucial. When a person hears voices that tell him to kill himself or to kill another, time is of the essence. It may be only a matter of time before this County sees another tragic occurrence, and, as aptly stated by one police chief, "We are beyond lucky that we have not had another Kelly Thomas."

FINDINGS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled “The Mental Illness Revolving Door: A Problem for Police, Hospitals, and the Health Care Agency ,” the 2014-2015 Orange County Grand Jury has arrived at 14 principal findings, as follows:

- F.1.** Deputy Sheriffs and police officers receive insufficient training on how to evaluate and handle the mentally ill in the field.
- F.2.** Deputy Sheriffs and police officers receive insufficient training regarding Laura’s Law.
- F.3.** Orange County’s Centralized Assessment Team is inadequate in that it takes too long for them to respond to the scene to assist police officers in their evaluations of the mentally ill.
- F.4.** Orange County’s mental illness triage system is inadequate in that there are no field screening protocols that would allow medical clearance in the field by law enforcement personnel or paramedics.
- F.5.** Orange County’s mental illness triage system is inadequate in that the police agencies either do not have a triage desk to advise and assist officers in the field or do not have psychiatric crisis mobile response teams at their disposal.
- F.6.** Orange County’s Psychiatric Evaluation and Response Team clinicians are insufficient in number to meet the needs of police agencies in Orange County.
- F.7.** Orange County’s Evaluation and Treatment Services facility is inadequate in that its capacity is insufficient to permit police officers to take all the mentally ill to it and drop them off at the facility, instead of transporting the patient to a hospital emergency room.
- F.8.** Orange County’s Evaluation and Treatment Service facility is inadequate in that the County does not permit medical triage or medical clearance in the field, and therefore directs police officers to obtain medical screening for even minor health conditions that could easily be treated at the facility.
- F.9.** Orange County’s Evaluation and Treatment Service facility is inadequate in that it directs police officers to take the mentally ill who may be under the influence of alcohol or drugs to a hospital emergency room rather than to a psychiatric emergency facility.
- F.10.** Orange County’s crisis intervention system is inadequate in that there is only one Evaluation and Treatment Service facility for the entire County.

- F.11.** The County’s crisis intervention system is inadequate in that it does not provide strategically located, stand-alone, drop-off psychiatric emergency stabilization facilities with medical treatment capability at convenient locations throughout the County.
- F.12.** The County’s crisis intervention system is inadequate in that there is no real-time, empty-bed registry to enable officers and clinicians in the field to determine bed-availability at the Evaluation and Treatment Service facility and at designated hospitals.
- F.13** The County’s crisis intervention system is inadequate in that there is no 5150, case management, and conservatorship database in place to assist officers and clinicians in the field to triage the mentally ill who do not qualify for a 5150 hold.
- F.14.** The Health Care Agency has not established benchmarks and a complete performance-measurement system with which to track the success and cost effectiveness of Laura’s law, as directed by the Board of Supervisors in May 2014.

RECOMMENDATIONS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled “The Mental Illness Revolving Door: A Problem for Police, Hospitals, and the Health Care Agency,” the 2014-2015 Orange County Grand Jury makes the following 14 recommendations:

- R.1.** All law enforcement officers should receive at least 40 hours of comprehensive Crisis Intervention Training on how to handle and evaluate the mentally ill in the field with periodic refresher training. (F.1.)
- R.2.** All law enforcement officers should receive mandatory and specific training regarding Laura’s Law. (F.2.)
- R.3.** Orange County’s Centralized Assessment Team’s response time should be improved significantly with a goal of eventually reducing its maximum response time to less than 20 minutes. (F.3.)
- R.4.** The Orange County Health Care Agency should adopt field screening protocols to allow (a) medical clearance in the field by law enforcement personnel and/or paramedics; and (b) transport by paramedics rather than police officers. (F.4.)
- R.5.** All law enforcement agencies should either have a psychiatric triage desk to advise and assist officers in the field or a psychiatric crisis mobile response team. (F.5.)

- R.6.** The Orange County Psychiatric Evaluation and Response Team staff should be increased significantly so that an embedded clinician can be placed with each law enforcement agency and can provide service 24/7 if requested. (F.6.)
- R.7.** Orange County’s Evaluation and Treatment Services facilities should be expanded to easily accommodate all 5150 walk-ins and all 5150s dropped off by police, paramedic, or ambulance. (F.7.)
- R.8.** Orange County Evaluation and Treatment Services should acquire the capability of conducting limited medical screening for minor health problems and cease from directing police officers to obtain medical screening for 5150s with minor health conditions that could easily be treated at Evaluation and Treatment Services facilities. (F.8.)
- R.9.** Orange County’s Evaluation and Treatment Services facilities should acquire the capability of handling 5150s who may have ingested alcohol or drugs, but who are not under the influence to such an extent that it inhibits stabilization or requires medical clearance at a hospital. (F.9.)
- R.10.** The Orange County Health Care Agency’s crisis intervention system should be expanded so as to provide a minimum of four Psychiatric Emergency Service facilities—one in South County, one in Central County, one in West County, and one in North County. (F.10.)
- R.11.** The County’s Health Care Agency should provide strategically located, stand-alone, drop-off psychiatric emergency stabilization facilities with medical treatment capability at convenient locations throughout the County. (F.11.)
- R.12.** The County’s Health Care Agency should provide a real-time, empty-bed registry to enable officers and clinicians in the field to determine immediately and accurately the current bed availability at Evaluation and Treatment Services facilities and at designated hospitals. (F.12.)
- R.13.** The County’s Health Care Agency should create and maintain a 5150, case management, and conservatorship database in place to assist officers and clinicians in the field to triage the mentally ill in the field who do not qualify for a 5150 hold, but who may qualify for Laura’s Law. (F.13.)
- R.14.** The Health Care Agency should establish benchmarks and a complete performance-measurement system with which to track the success and cost effectiveness of Laura’s law, as directed by the Board of Supervisors in May 2014.

REQUIRED RESPONSES

The California Penal Code section 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such

comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected official shall comment on the findings and recommendations pertaining to the matters under that elected official's control within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code section 933.05, subdivisions (a), (b), and (c), provides as follows, the manner in which such comment(s) are to be made:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section 933.05 are required from:

Responses are required for Findings F.3 through F.14. and for Recommendations R.3 through R.14. from the Orange County Board of Supervisors.

Responses are required for Findings F.1 and F.2. and for Recommendations R.1. and R.2. from the Orange County Sheriff-Coroner.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section 933.05 are requested from:

Responses are requested for Findings F.3 through F.14. and for Recommendations R.3. through R.14. from the OC Health Care Agency.

Responses are requested for Findings F.1 and F.2. and for Recommendations R.1. and R.2. from the Police Chiefs of the following cities:

1. Anaheim
2. Brea
3. Buena Park
4. Costa Mesa
5. Cypress
6. Fountain Valley
7. Fullerton
8. Garden Grove
9. Huntington Bch
10. Irvine
11. La Habra
12. La Palma
13. Laguna Beach
14. Los Alamitos
15. Newport Beach
16. Orange
17. Placentia
18. Santa Ana
19. Seal Beach
20. Tustin
21. Westminster

COMMENDATIONS

The Grand Jury commends the Police Department of the City of Orange, the Santa Ana Police Department, the Hospital Association of Southern California, and St. Joseph Hospital for collaborating on and producing a set of training videos for use by police officers and deputy sheriffs in CIT training. The Grand Jury commends the Director of the John George Psychiatric Hospital in San Leandro, California and the Director of Behavioral Health for Alameda County for their valuable assistance. The Grand Jury also commends Golden West College for developing and expanding its CIT course to 24 hours.

END NOTES

1. The Memphis Model

The first CIT was established in Memphis in 1988 after the tragic shooting by a police officer of a man with a serious mental illness. This tragedy stimulated a collaboration between the police, the Memphis chapter of the National Alliance on Mental Illness, the University of Tennessee Medical School, and the University of Memphis to improve police training and procedures in response to mental illness. The so-called Memphis model has achieved remarkable success, having been adopted by more than 2000 communities in more than 40 states and having been implemented statewide in several states.

The Memphis Model of CIT has several key components:

- A community collaboration between mental health providers, law enforcement, and family/consumer advocates, which determines the best way to transfer the mentally ill into the mental health system
- A community coalition to ensure that there are adequate facilities for mental health triage
- A curriculum of specialized training to teach police officers how to interact with persons experiencing a psychiatric crisis
- Special training to respond safely and quickly to people with serious mental illness in crisis
- Focused training on how to recognize the signs of psychiatric distress and how to de-escalate a crisis
- Materials on how to link people with appropriate treatment, which has a positive impact on fostering recovery and reducing recidivism

The benefits of the Memphis Model of CIT are as follows:

- Helps keep the severely mentally ill out of jail and gets them into treatment
- Reduces stigma and prejudice toward the severely mentally ill
- Reduces officer injuries and SWAT team emergencies
- Reduces the amount of time officers spend on the disposition of mental disturbance calls

2. Defense of Laura's Law

On January 3, 1999, Kendra Webdale was pushed to her death before an oncoming subway train beneath the streets of Manhattan by a man diagnosed with paranoid schizophrenia and with a history of mental illness and hospitalizations who had neglected to take his prescribed medication. Responding to this tragedy, the Legislature enacted Mental Hygiene Law § 9.60 (Kendra's Law) (L. 1999, ch. 408), thereby joining nearly 40 other states in adopting a system of assisted outpatient treatment (AOT) pursuant to which psychiatric patients unlikely to survive safely in the community without supervision may avoid hospitalization by complying with court-ordered mental health treatment. In enacting the law, the Legislature found that there are mentally ill persons

who are capable of living in the community with the help of family, friends, and mental health professionals, but who, without routine care and treatment, may relapse and become violent or suicidal, or require hospitalization. (L 1999, ch. 408, § 2.) In addition, in mandating that certain patients comply with essential treatment pursuant to a court-ordered written treatment plan, the Legislature further found that some mentally ill persons, because of their illness, have great difficulty taking responsibility for their own care and often reject the outpatient treatment offered to them on a voluntary basis. (*Id.*)

It did not take long for the law's constitutionality to be challenged. The question was whether the law achieved its goal of creating a mechanism to ensure that individuals who met the criteria remained treatment-compliant while in the community, in a way that was consistent with the Constitutional rights of those individuals. In the Matter of K.L., 500748/00 (Sp. Ct., Queens County, 2000), the Mental Hygiene Legal Service (MHLS) moved for dismissal of a petition, arguing that the statute was unconstitutional on two grounds: that it unconstitutionally deprived patients of the fundamental right to determine their own course of treatment, and that the statutory provisions concerning removal for observation following non-compliance with the AOT order are facially unconstitutional. The Attorney General of the State of New York intervened to support the constitutionality of the statute.

The Supreme Court rejected each of the arguments advanced by the MHLS, upheld the constitutionality of Kendra's Law, and found that it comported with due process, noting that Kendra's Law does not permit forced medication or treatment. The Court reasoned that the restriction on a patient's freedom affected by a court order authorizing AOT is minimal, inasmuch as the coercive force of the order lies solely in the compulsion generally felt by law-abiding citizens to comply with court directives. The Court observed that although the existence of such an order and its attendant supervision increases the likelihood of voluntary compliance with necessary treatment, a violation of the order, standing alone, ultimately carries no sanction.

3. The Sequential Intercept Model

The Sequential Intercept Model provides a conceptual framework for communities to use when considering the interface between the criminal justice and mental health systems as they address concerns about criminalization of people with mental illness. The model envisions a series of points of interception at which an intervention can be made to prevent individuals from entering or penetrating deeper into the criminal justice system. The concept is that most people will be intercepted at early points, with decreasing numbers at each subsequent point. The interception points are law enforcement and emergency services; initial detention and initial hearings; jail, courts, forensic evaluations, and forensic commitments; reentry from jails, state prisons, and forensic hospitalization; and community corrections and community support. The model provides an organizing tool for a discussion of diversion and linkage alternatives and for systematically addressing criminalization. Using the model, a community can develop targeted strategies that evolve over time to increase diversion of people with mental illness from the criminal justice system and to link them with community mental health treatment. (Munetz & Griffin, 2006)

Although many communities are interested in addressing the overrepresentation of people with mental illness in local courts and jails, the task can seem daunting and the various program options confusing. The Sequential Intercept Model provides a workable framework for collaboration between criminal justice and treatment systems to systematically address and reduce the criminalization of people with mental illness in their community

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APPENDIX: ACRONYM LIST

AAOPOD	Adult and Older Adult Performance Outcome Department
AOT	Assisted Outpatient Treatment
BHS	Behavioral Health Services
CAT	Centralized Assessment Team
CIT	Crisis Intervention Training
COPS	Community Oriented Policing Services
CRT	Crisis Response Team
EPU	Emergency Psychiatric Unit
ETS	Evaluation and Treatment Services
FSP	Full Service Partnership
HCA	Health Care Agency
LPS	Lanterman-Petris-Short Act
NAMI	National Alliance on Mental Illness
PERT	Psychiatric Evaluation and Response Team
PES	Psychiatric Emergency Services
PET	Psychiatric Evaluation Team
POST	Peace Officers Standards and Training
TACT	Time, Atmosphere, Communication, and Tone: A method of talking to the mentally ill

**ORANGE COUNTY LOCAL AGENCY
FORMATION COMMISSION (LAFCO):
IT'S TIME TO REDRAW THE LINES**



GRAND JURY 2014-2015

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EXECUTIVE SUMMARY

The Local Agency Formation Commission (LAFCO) is an independent regulatory commission in each California county, created by the State Legislature to control and modify the boundaries of cities and special districts. LAFCOs are delegated authority from the Legislature to ensure orderly, efficient government through the logical structuring and restructuring of these local entities. The primary purposes of LAFCOs are to consolidate special districts, eliminate the unincorporated areas within a county, and optimize the cities' boundaries.

Although the Orange County LAFCO (OC LAFCO) previously made some inroads at eliminating the unincorporated "island" areas, they have yet to annex the remaining 30 islands. These islands are the most obvious and urgent issues confronting OC LAFCO. With regard to consolidations of special districts, OC LAFCO has failed to fulfill the principles underlying the enabling legislation that created it. Simply put, OC LAFCO has never seized the initiative to reduce redundancies and simplify local government by changing its structure.

OC LAFCO has the charter and authority to bring about this badly needed and overdue redesign and realignment of local government. OC LAFCO needs to exercise its delegated latent powers in order to carry out its mandate of simplifying local government through structural reform and reorganization. OC LAFCO's numerous studies, programs, and strategies should be used as *means* to implement the objectives of the law, to achieve results, and to do what is right for the citizens of this County.

BACKGROUND

"No government ever voluntarily reduces itself in size." Ronald Reagan

What a LAFCO Is

LAFCOs are political subdivisions of the State of California. They are independent regulatory commissions created by the California Legislature to manage growth and oversee the formation and development of local government in all 58 counties. Thus, LAFCOs are charged with controlling, adjusting, and changing the boundaries of cities and most special districts, as well as with creating new cities and reorganizing local agencies (California Government Code sections, 56001, 56325 [hereinafter referred to as Gov't. Code]).

There are 58 LAFCOs in the state—one in every county (Gov't. Code section 56325). Orange County's LAFCO (OC LAFCO) has jurisdiction over the County, its 34 cities, and 27 of its 38 special districts. The Legislature delegated to LAFCOs the power to oversee and change local boundaries (Gov't. Code section 56001).

LAFCO commissions have representation from a unique mix of sectors: county, city, special district, and the public at large. Thus, the OC LAFCO is composed of the following seven commissioners: two supervisors from the Board of Supervisors (plus one alternate); two city council members (plus one alternate); two special district board members (plus one alternate); and one non-office-holding representative of the public at large, who is selected by the Commission (plus one alternate). The alternates are

expected to attend the meetings, but they may vote only when the regular member is absent or is recused (Gov't. Code section 56325).

How LAFCOs Were Created

In 1959, with the phenomenal population growth that led to a veritable land use “gold rush,” Governor Edmund G. Brown, Sr. appointed a Commission on Metropolitan Area Problems to study and make recommendations on the growing complexity of local governmental jurisdictions. This resulted in the creation of LAFCOs with passage of the Knox-Nisbitt Act of 1963, which was later recodified in the Cortese-Knox Local Government Reorganization Act of 1985. A call for reform resulted in the Legislature’s formation of the Commission on Local Governance in the 21st Century, which produced a report entitled, “Growth Within Bounds.” The Commission’s recommendations resulted in passage of AB 2838, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH Act), which delegated the Legislature’s boundary powers to LAFCOs and gave them additional tools to address urban growth issues (CALAFCO, 2014; California Little Hoover Commission, 2000).

The Purpose of LAFCO

The declared legislative intent of the CKH Act was to: (1) encourage orderly growth; (2) promote efficient and orderly formation of local government entities; (3) foster “logical formation and modification of the boundaries of local agencies, with a preference granted to accommodating additional growth through the *expansion* of the boundaries of those local agencies that can best accommodate governmental services in the most efficient manner feasible;” (4) contribute to logical and reasonable development; (5) shape development of local agencies to provide for present and future needs of the county and communities; (6) assure efficient, sustainable public services; (7) preserve agricultural land resources and open space; and (8) discourage and prevent urban sprawl (Gov’t. Code sections 56001, 56301).

The CKH Act expressly clarified that LAFCO’s powers should be directed toward consolidating all municipal-type services in cities. Thus, the Legislature declared that governmental services are *best* provided by a “*single, multi-purpose* governmental agency,” i.e. a city, because a city is the “best mechanism” for delivering community services and establishing community service priorities in *urban* areas,” whereas a special district may serve a “critical role” in the provision of services in *rural* areas. The Legislature recognized that a city is more “accountable for community service needs and financial resources” (Gov’t. Code, section 56001).

What LAFCOs Do

The Legislature delegated both planning and regulatory powers to LAFCOs. LAFCO’s planning powers include the power to (a) develop, designate, and update spheres of influence, which delineate the future boundaries and service areas of cities and special districts; (b) prepare and conduct Municipal Service Reviews for every city and special district; and (c) recommend boundary changes (CALAFCO 2003).

Planning Powers

LAFCOs plan by adopting and revising spheres of influence (SOIs). An SOI is the territory that represents what LAFCO independently believes to be what a city or special district should plan to annex in the future. Therefore, LAFCOs issue planning documents that define a city's or special district's appropriate and probable ultimate geographical boundaries and service areas (Gov't. Code section 56425).

In determining an SOI, LAFCOs must assess the feasibility of governmental reorganization to increase efficiency in service delivery. Upon fixing SOIs, LAFCOs may recommend boundary changes consistent with the SOIs. In addition, LAFCOs must enact policies designed to promote the logical and orderly development or redevelopment of areas within the SOI (Gov't. Code sections 56300, 56301, and 56425).

LAFCOs also plan by preparing detailed Municipal Service Reviews (MSRs), which evaluate how agencies currently provide services and how they plan to deliver services in the future, given the changing demographic and fiscal trends. An MSR is an in-depth, comprehensive study of all of the agencies that provide the public services within the study area. An MSR informs the preparation of SOIs, addresses governance re-structure options (including consolidations and annexations), and assists in planning for future delivery and funding of municipal services. MSR's are to be given "major consideration when the Commission considers a sphere-of-influence review, update, or amendment" (Orange County, 2013). Thus, MSR's assess the service layers, area by area, and inform and guide the sphere-of-influence process (Gov't. Code section 56430).

The CKH Act requires LAFCOs to update the spheres of influence every five years for each city and special district in the County. Because SOIs must be prepared in conjunction with, and are predicated upon, detailed and exhaustive MSRs, LAFCOs must also prepare and revise MSRs every five years (Gov't. Code section 56430).

In addition, OC LAFCO engages in planning by developing and promoting two interrelated programs or tools that foster collaboration between the County, cities, and special districts and that assist them in identifying opportunities to lower costs and increase efficiency: the Shared Services Program (SSP) and the Fiscal Trends Analysis program (FTA) (Gov't. Code section 56378). The SSP, a spin-off of one of the required findings under the MSRs ("status of shared facilities and services"), and launched by OC LAFCO in 2011, provides a web-based interactive information-exchange forum (called the "Orange Pages") for cities and districts to enter into a spectrum of joint, cost-saving, cost-sharing partnerships for services, projects, and staffing. The SSP concept and program (sometimes also referred to as the Collaborative Services Program) (CSP) encourages two or more adjoining districts and/or cities to contract with a single service provider at a reduced, negotiated rate (Gov't. Code section 56430).

Regulatory Powers

As a regulatory agency, a LAFCO is empowered to perform the following functions: (a) review and approve proposals to change boundaries of cities and special districts; (b) control and manage modifications of existing agencies and extensions of

public services; and (c) initiate proposals on its own to bring about consolidations of special districts, mergers of special districts with municipalities, and dissolutions of special districts. LAFCOs regulate by reviewing and acting on proposals to change boundaries (Transforming Local Governments, 2013; Gov't. Code section 56300).

LAFCOs control nine types of boundary changes: (1) incorporations (of cities); (2) annexations (of additional territory to a city or district); (3) formations (of special districts or subsidiary districts); (4) consolidations (of two or more cities or special districts into a single city or special district); (5) mergers (of a special district into a city when the district's territory is entirely within the city limits); (6) detachments (of territory from a city or district); (7) disincorporations (termination of a city's existence); (8) dissolutions (termination of a district's existence), and (9) reorganizations (combining two or more boundary changes into one proposal) (Gov't. Code section 56375).

Consolidation entails the joining of two or more cities into a single city or the combining of two or more special districts into a single district. Consolidation is appropriate when it would result in cost savings in the delivery of services, elimination of duplicative staff positions, and overhead, increased operational efficiency, and more efficient use of facilities. Upon approval, the receiving city or special district takes over the services of the subsumed city or district and receives its tax apportionment.

LAFCO's Own Initiatory Powers

Initiation begins the process for each of the above-described boundary changes. An initiation may begin in one of three ways: (1) by petition (signed by voters or landowners), (2) by resolution (of the governing body of an affected local agency, such as the county, city, or special district that overlaps the affected territory), or (3) by LAFCO itself. LAFCO may initiate only special district consolidations, dissolutions, and mergers.

LAFCOs were created in 1963, and in 1971, the OC Grand Jury asked the OC Board of Supervisors to support legislation that would give LAFCOs the initiatory power. It was not until 1993, however, that the California Legislature enacted the Gotch bill (AB 1335), which finally delegated to LAFCOs themselves the authority to *initiate* dissolutions, consolidations, and mergers of special districts, based on MSR, SOI, FTAs, and other studies conducted by LAFCOs. Assemblyman Gotch, who had been on San Diego's LAFCO for many years, sought a means to simplify and streamline the consolidation process and strengthen the annexation process (Senate Local, 2003). The purposes of the Gotch Amendment were to (a) provide clearer procedures for LAFCO decision-making; (b) consolidate overlapping districts into a more coherent system of local government; and (c) dissolve districts that have outlived their purpose.

Special Districts

"California leads the nation in the sheer number of special districts, more than 4,711 up and down the state—so many that even state officials have lost track of all of them" (Sforza) Orange County has more special districts than it has cities: 38 special districts versus 34 cities. "Special districts are the least understood but most numerous form of local government," and "with so many governments, many people wonder

whether anybody actually oversees their numbers, powers, and jurisdictions” (Senate Local Government Committee, 2003).

The California Legislature allowed the formation of special districts to provide municipal-type services, such as water, sewer, and fire protection, which were not readily available through city or county government at the time of “out-of-control” development. Thus, a special district is a separate, autonomous agency of the State that is created to perform municipal-type functions at the local level to a specific area within defined boundaries. Almost all special districts (85%) are limited-purpose, single-function districts in that they deliver only one type of service, e.g., water, sanitation, library, park and recreation, street maintenance and repair, storm water collection and treatment, pest-abatement, cemetery, etc., whereas cities are general purpose governments that perform a broad array of multiple municipal services (Mizany & Manatt, 2005).

Special districts are independent government bodies. Their local operations are not governed by the state, counties, or cities, but solely by their boards of directors. They do not include, and are independent of, a city, a county, school district, “Mello-Roos” district, benefit assessment district, or community college district (Gov’t. Code sections 56036, 56044, 56127).

Since 1971, Orange County grand juries and various newspaper articles have addressed the issue of limited-purpose special districts, finding some to be “obsolete,” “outmoded,” “duplicative,” “unnecessary,” and “ineffective,” with obvious redundancies and wasteful overlapping layers (SLO Coast Journal, 2011). Moreover, news media and grand juries across the state have described special districts as “virtually invisible,” “lacking oversight,” and the “least understood and most numerous form of government,” with “little impetus for streamlining” (Senate Local Government Committee, 1997). Indeed, the redundant patchwork quilt of special districts blanketing Orange County and the entire state has been decried for decades (LAFCO 101, n.d.).

The sheer multiplicity of single-purpose districts can lead to obfuscation—if not invisibility—and therefore to a lack of accountability and transparency. In addition, this jumbled jurisdictional mix adds to the citizenry’s bewilderment over multiple layers of local governments. This fragmented, disjointed system of overlapping governmental layers has been characterized by one study as being an inefficient and uneconomical use of regional and local resources (California Little Hoover Commission, 2000).

Like hula-hoops, martinis, and freeways, special districts became an art form in California. Special districts first arose in California in the 1880’s to meet the water needs of farmers in the San Joaquin Valley. Later, new water district formation shifted away from rural, agricultural lands towards water-deficient communities in urban areas to satisfy the suburbs’ growing demand for water. In the 20th Century, special districts increased dramatically in both number and scope. The prosperity that followed World War II increased the demand for public services of all kinds and, consequently, special districts. Special districts became a popular way to meet these incremental needs because, unlike complex municipal

bureaucracies, special districts were flexible and provided desired services quickly and efficiently (CALAFCO, 2014).

Consequently, the oldest special districts in the early part of the last century were created to provide services for the local citizens *before* cities either were founded or had matured. Thus, special districts were a necessity because they provided infrastructure and services that cities could not adequately provide *at that time*. Since the 1990's, Orange County has changed from a rural community to an urban concentration of wall-to-wall cities that not only surround the special districts, but also overlay them (Best, Best & Krieger, 2008). Special districts continue to perform a valuable service. The issue now is not whether they should continue to exist, but rather whether some should be consolidated to achieve greater efficiency.

Originally, LAFCOs played only a reactive role regarding boundary changes. The commissions acted only on proposals submitted by other agencies or voters. During the recession in the early 1990s, however, the Legislature insisted that reducing the number of special districts could save scarce revenues and decided that empowering LAFCOs to *initiate* petitions on their own could speed up the process. The Legislature viewed the high number of special districts and the low rate of their consolidations or mergers "as symptomatic of inefficiency in the overall functions of local government" (Mizany & Manatt, 2005).

However, LAFCOs have been reluctant to use their initiatory powers. In fact, during the 20 years following the passage of the Gotch Amendment, only a single, very modest LAFCO-initiated proposal had been successfully implemented in the entire State. Thus, in all of California, "only one LAFCO-initiated proposal has actually led to the elimination of a special district" (Senate Local Government Committee, 2003).

In Orange County, the total number of special-district consolidations completed by OC LAFCO in the last ten years is *one*. This consolidation, was initiated by a special district, and occurred in 2006. OC LAFCO has never used its initiatory power. Currently, there are 27 special districts directly under OC LAFCO's jurisdiction (see Appendix).

Annexations

Before 2000, there were over approximately 80 unincorporated pockets, or "islands," of developed, inhabited land in the County that were completely surrounded by cities. In addition, there were huge swaths of undeveloped rural lands, canyons, and open space, most of which lay in unincorporated territory. These large open spaces still exist today and occupy the eastern and southeastern portions of Orange County (Carchi, 2013).

The islands are prime examples of inefficient service-delivery systems. By definition, all municipal-type services are delivered to the islands by the County and by special districts, whose jurisdictions overlay the islands. A former OC LAFCO official has opined that although the County is well-suited to deliver *regional* services and programs on a countywide basis, it is ill-suited to provide *municipal*-type services on a local basis (Carchi, 2014).

In 1996, OC LAFCO adopted a strategic five-year plan for the accelerated annexation of county islands. However, the success of the plan depended on the Board of Supervisors' approval of adequate budget and staffing for County staff. Left without the support of the County, OC LAFCO's tiny, four-person staff was incapable of implementing the comprehensive plan (Orange County, 2013).

Following the 1994 bankruptcy, the OC Board of Supervisors initiated a restructuring plan of county government and reviewed its approach to providing services. The ensuing study found that providing municipal-type, city-level services to unincorporated islands is duplicative and costly and that residents in these unincorporated "island" areas can be served more efficiently by the surrounding cities. The study concluded that the County should focus on the business of providing regional, not local, services to county residents.

OC LAFCO saw the bankruptcy as a window of opportunity for action and adopted a mission statement pledging to work with others to initiate and study annexations and consolidations. OC LAFCO formed an advisory committee to assist in creating a long-term vision of the appropriate service-delivery agencies. The Islands Revitalization Plan (IRP) was initiated in 2000 in partnership with the OC League of Cities and the County.

In 2000, the California Legislature significantly streamlined the island annexation procedures and expedited the annexation process by allowing cities to annex small, urban islands (less than 75 acres in size) *without a vote of the residents*. OC LAFCO immediately increased its staff to eight, identified annexation as its top priority, and directed staff to work with the County and the cities to develop a comprehensive work program for countywide annexation of all islands, but particularly the small ones under 75 acres. That same year, OC LAFCO adopted an Unincorporated Islands Program (UIP), and an Islands Revitalization Program (IRP), which called for OC LAFCO to collaborate with the County and the cities in the transition of unincorporated pockets from county to city jurisdiction. (Orange County, 2014-2015, p.22)

The OC Board of Supervisors (BOS) followed suit, made annexation a high priority, and renewed its effort to develop specific strategies and programs for an islands program in order to meet the goals of its overall long-term annexation strategy. On January 24, 2000, the OC BOS, in partnership with OC LAFCO and the Orange County League of Cities, adopted an Unincorporated County Island Annexation Strategy (IAS) as a policy platform to expedite annexations and to reach the goal of transitioning island municipal services from the County to annexing cities within three years. At the same meeting, the Board of Supervisors adopted an Islands Revitalization Strategic Plan (RSP) to demonstrate the County's interest in revitalizing the infrastructure of unincorporated neighborhoods as "a tool" with which to facilitate its annexation strategy (Agenda, 2000; Agenda, 1999).

In 2000, OC LAFCO and the BOS voted to provide short-term staffing to "jump-start" the UIP. The BOS directed the assignment of a project manager and charged him with the task of enlisting the assistance of all County departments to ensure timely annexation of the County's islands. The BOS also provided a financial analyst from the

County Chief Financial Officer's Office to assist OC LAFCO in obtaining data and conducting fiscal analyses for proposed annexations. The RSP was developed with input from the BOS and each department head and was the logical outgrowth of the Board's emphasis on the annexation of all islands in adjacent cities (Agenda Staff Report, January 24, 2000). The County did a needs assessment to serve as the basis of agreements to provide the annexing cities with infrastructure improvements and resources to be continued at County expense for specified period. (Orange County Board of Supervisors meeting, Jan. 24, 2000).

The goal of the three-year work program was to annex 50 of the 80 or so small islands within a three-year period, with 40 of those islands slated to be annexed within the first two years of the program. OC LAFCO fell short of its goal, however.

OC LAFCO carried out the annexation of only five islands during the first two years of the UIP. It then completed the annexation of an additional 20 islands during 2003, bringing the three-year total to 25 islands. Thus, as a result of the UIP, IRP, IAS and RS, together with the County's project manager and analyst, OC LAFCO was able to cut the number in half rather quickly by first plucking the "low-hanging fruit."

Along with the initial successes of the program came challenges, however. Annexation slowed to a crawl due to politics, finances, resident opposition, and infrastructure issues. Some cities were not interested in pursuing island annexations due to competing priorities or concerns with potential fiscal liability. (Personal communication, February 5, 2015)

Many of the remaining islands had infrastructure deficiencies that were expensive to upgrade (e.g., no curbs and gutters, private streets that did not meet city standards, septic tanks instead of sewer lines, inadequate drainage, etc.) and lacked sufficient revenue-generating potential to offset those costs (e.g., no sales tax revenue from malls, auto dealerships, hotels, etc.). In still other cases, strong resident opposition to annexation prompted some cities to avoid pursuing a "forced" annexation against the will of residents. (Personal communication, December 2, 2014) Despite these difficulties, 12 additional islands were successfully annexed between 2004 and 2006, bringing the total of annexed islands to 37.

Meanwhile, back in Sacramento, the annexation process had been given even greater impetus. New state legislation, effective January 1, 2005, doubled—from 75 acres to 150 acres—the size of an unincorporated island that could be annexed without a vote of the residents. This amendment evidenced the Legislature's clear desire to promote the continued annexation of islands to surrounding cities.

In 2008, OC LAFCO revived its efforts to coax cities into annexing islands through the adoption of the Unincorporated Islands Incentive Program (UIIP). A new stimulus program was developed to encourage cities to initiate annexation of the remaining islands within their SOI by offering significant incentives from 2008 through 2010. These incentives included a waiver of application fees, OC LAFCO staff's own preparation of the application materials, OC LAFCO staff's assistance in conducting

community meetings to allay citizens' fears, to solicit their support, and to fast-track the application process.

In 2009, OC LAFCO took a further step to encourage annexation of the remaining islands by adopting a Stakeholder Plan (SP) to supplement the economic incentives. Under this Plan, OC LAFCO took the initiative and became the manager of the overall islands annexation effort by (a) setting up meetings with County and city staff to identify an interest in, and obstacles to, annexation; (b) making presentations to respective city councils about the island(s); and (c) providing educational-outreach meetings to affected agencies and residents. In addition, OC LAFCO developed fiscal models assessing the annexation's financial impacts to the County and the city, prepared needs assessment of the islands, including any infrastructure, public services, and facilities shortfalls, and expedited the application process by assisting the city in preparing the application materials.

In 2011, OC LAFCO created a Community Islands Task Force (CTF), consisting of representatives of the affected supervisorial districts, the County's Chief Executive Officer, the affected cities, and the Business and Industry Association. The goal of the CTF was to develop ways to address municipal-service and infrastructure deficiencies within the islands and thereby to facilitate annexation. OC LAFCO staff worked proactively with the County and cities to encourage logical boundaries, effective governmental structure, and efficient delivery of services throughout the County.

Implementation of the UIIP, SP, and CTF resulted in the successful annexations of an additional 10 islands. Thus, from 2000 to 2014, a total of 47 islands—43 small islands (under 150 acres) and four large islands (over 150 acres)—have been annexed. There is still much work to be done, however, to achieve the County's and OC LAFCO's original goal. There are 20 small islands and 13 large islands remaining to be annexed, and OC LAFCO is currently working on five. For a map of the islands, see the Appendix.

Up until 2010, OC LAFCO's goal had been to proceed "full steam ahead" towards annexation of all islands, and one of the CTF's original goals was to "facilitate annexation" (Orange County, 2014, April 9. p. 184). In 2011, however, the CTF made a change in its course, concluding that while "annexation remains *an* important tool to achieve 'equity in municipal services' *between* cities and unincorporated areas, *other tools can also* be used, such as municipal services agreement (MSAs)" (Orange County 2014, April 9. pp. 184-185). As a result, OC LAFCO reverted to encouraging "non-conventional, interagency relationships and management strategies (e.g., SSs, MSAs, and collaborative partnerships between an island and its adjacent city) to "develop ways to address municipal service deficiencies *within* the islands" (Orange County 2014, April 9. p. 184).

Thus, OC LAFCO "reframed the discussion with the perspective that the role of government is to provide municipal services in a manner that fosters whole and healthy communities" (Orange County, 2014, August 13.; Orange County 2014, April 9. pp. 184-185). The Grand Jury believes the OC LAFCO lowered its sights away from annexations by establishing a new goal: "transitioning islands to whole and healthy communities" to help them "enjoy a level of municipal services that is similar to the city

in whose SOI the island lies” (Orange County 2014, April 9. p. 184). Nowhere in this policy is there any mention of annexation as the ultimate goal.

As a result of the new direction taken by OC LAFCO, the annexation movement has slowed to a crawl. OC LAFCO has carried out only four annexations in the last seven years. Of the 33 remaining unincorporated islands, 10 are small (150 acres or less), and the other 23 are large (ranging in size from 194 to 1,513 acres). The unincorporated islands have been strategically divided into three areas: (1) “priority areas” with ongoing discussions and a goal of completing within two to five years; (2) “opportunity areas” with many anticipated challenges and difficulties; and (3) “long-range areas” with no expectation of success, even in the long run. (Orange County 2014, August 13).

Since 2011, OC LAFCO has retreated to a reactive position due to a lack of staff and resources: “Unless initiated by a city, resident group or other affected agency, the annexation efforts must be set aside and deferred to the future” (Orange County 2011, April 9. Memorandum, February 9, 2011).

REASON FOR THE STUDY

This report is a follow up from previous Grand Jury reports issued over the last 45 years and seeks to find workable, viable solutions to long-standing problems. The Grand Jury chose to study OC LAFCO to determine if it had made progress in these areas and if it was effectively working toward the consolidation of special districts and the annexation of unincorporated islands. It bears noting that this study focuses on OC LAFCO itself, i.e. its powers and duties, but *not* on any particular special district, city, or unincorporated area. Moreover, this report does *not* address consolidations of cities.

This topic was selected by the 2014-2015 Grand Jury because the Grand Jury, like LAFCO, is charged with oversight responsibility over local government. Upon examining the law governing LAFCOs and after reviewing the little progress made by LAFCO during the last ten years, the Grand Jury decided to inquire into the reasons for the lack of progress. Upon examining the pronouncements of LAFCO experts and former LAFCO commissioners on OC LAFCO’s own website, the Grand Jury saw a disconnect between what the law required, what OC LAFCO professed to be its duty, and what OC LAFCO had actually accomplished.

The following statements from present and former LAFCO commissioners, County leaders, and statewide LAFCO experts underscored the need for this study.

How LAFCO can be a leader in Orange County? People want efficiency in their government—not solely within government, but efficiency *of* government. There are many governmental entities that were established 20, 50, 100 years ago that don’t need to be in existence. A continual focus and re-focusing on how we can best perform the necessary functions of government in the most efficient way possible is really the charge of LAFCO leadership (OC LAFCO website, n.d.).

“I think what LAFCO needs to look at [sic] is how local government is organized, the amount of special districts, and unincorporated areas. Frankly, does it make sense

to continue the way we have local government—the layers of local government, the types of local government? Does that still make sense to have these various levels of park-and-recreation districts, sewer districts, water districts, etc.? Does it make sense not to pursue consolidation and reorganization?” (OC LAFCO website, n.d.)

“At the highest 40,000-foot level, I think LAFCO needs to ask itself the question, ‘Are the cities and special districts organized today in the most efficient and effective form possible?’ The answer to that is obviously, ‘No.’ So the follow-up question would be, ‘What are you doing about it, LAFCO?’” (OC LAFCO website, n.d.).

METHODOLOGY

This report is based on numerous interviews with high-ranking County officials, OC LAFCO commissioners, and members of OC LAFCO’s executive staff, both past and present. Valuable material was gleaned from OC LAFCO’s publications and its website (www.oclafco.org), and information was obtained through attendance at meetings and conferences conducted by OC LAFCO. Other sources for this investigation were articles, reports and the applicable state codes.

INVESTIGATION AND ANALYSIS

“OC LAFCO is a state-mandated agency charged with the difficult task of trying to right over 100 years of illogical city and special district boundaries in Orange County” (CALAFCO, 2003).

Consolidations of Special Districts

In 2011, the Legislative Analyst’s Office found evidence that “smaller districts can be less efficient and less accountable than larger districts” because larger districts are “better able to realize economies of scale by spreading fixed costs, like management, overhead, and infrastructure over more constituents, resulting in lower per capita expenditures.” It observed that “consolidation of smaller districts also provides an opportunity to reduce personnel cost by eliminating some high-paying leadership positions, such as general managers, and by reducing the total number of board members” (Cal. State Legislative Analyst’s Office, 2011).

Reform is overdue. As stated by Governor Edmund Brown, Jr., “There’s a lot of overlap. It’s time for reform. It’s an unnecessary expense. I think we can consolidate a number of special districts” (KTVU News, 2011). In fact, the Brown administration is pushing late-emerging budget legislation to let the State Water Board force the consolidation of special water districts throughout the State (Miller, 2015). “Combining these water and sewer districts [within a county] in a single service district would eliminate these inefficiencies and senseless duplication of services and would produce a single system capable of serving the entire community efficiently and more cost effectively” (Half Moon Bay Review, 2013).

Legal Duty

Borders matter, plain and simple. The CKH Act requires that LAFCOs rely on their powers to consolidate in order to promote more efficient, transparent, and

accountable service delivery to ratepayers. Consolidations not only make sense, they are the means with which the law prefers to achieve efficiency (Gov't. Code section 56001). Wherever two or more single-purpose agencies exist, LAFCO must consider and study reorganization and consolidation (Gov't. Code section 56301).

AB 1335 (1993), which authorized LAFCOs to initiate reorganization proposals, placed the responsibility for district consolidations, mergers, and dissolutions squarely on the shoulders of the LAFCO (Senate Local Gov't. Committee, 1997; Gov't. Code section 56375). Because of its independence and impartiality, it is LAFCO's *role* to not only present the benefits and confront the barriers to reorganizational and restructuring options, but also to *initiate* the processes of consolidation, merger, and dissolution (Gov't. Code section 56375).

Therefore, it is legally incumbent on OC LAFCO to "more *actively* reorganize government" through its initiatory powers (Senate Local Gov't. Committee, 1997). OC LAFCO's responsibility is not merely to sit back and wait for agencies to submit proposals. Therefore, it has a duty consider *initiating* consolidation petitions.

OC LAFCO's Acknowledgment of its Legal Duty

OC LAFCO recognizes that its charter is to "focus on boundary reorganizations to create logical service delivery boundaries and/or greater economies of scale to promote more efficient and cost-effective service provision" (Orange County, 2014-2015). It has always acknowledged that its duty is "to streamline public services by encouraging and promoting consolidations of cities and special districts" (Smith, 1997). It has recognized that its duty is to restructure through those strategies envisioned by the CKH Act, including dissolution, merger, and consolidation. (Smith, 1997)

In 1997, OC LAFCO was prioritizing special district consolidation based upon which was most likely to achieve efficiency and cost-savings. In addition it was "participating in studies to craft an optimal reorganization plan," based on efficiency and cost-saving factors (Senate Local Gov't. Committee, 1997). That same year, at a Senate hearing held in Sacramento, "OC LAFCO *agreed* with Assemblyman Pringle that reorganizing water and sanitary agencies would increase public accountability and service efficiency" (Senate Local Gov't. Committee, 1997).

As late as this year, OC LAFCO officials have noted that there are some very small special districts in the County and have questioned whether five special districts instead of one make any sense. One official has gone on to opine that five districts must be inefficient, with five boards of directors, five executive managers, five assistant managers, five heads of each dept., etc. (personal communication, April 15, 2015.)

OC LAFCO also recognizes its legal authority to initiate consolidation, mergers, and dissolutions. However, OC LAFCO has officially stated that it will avail itself of this power *only as a last resort*. OC LAFCO has publicly declared, "The Commission *prefers* proposals submitted by petition of voters or landowners or by resolution of application by an affected local agency," i.e., by a city or special district (Orange County 2014, April 9).

Thus, OC LAFCO concedes that it has this power to initiate consolidation proposals, and it grants that it will “consider initiating proposals that it believes further the interests of increased efficiency and government accountability,” but its declared preference for agency-initiated proposals clearly trumps this concession (Orange County 2014, April 9). Therefore, OC LAFCO has failed to acknowledge that to effectuate the purposes and policies underlying the CKH Act, it has a *duty* to initiate consolidation proposals.

Promising Opening, but No End Game

OC LAFCO saw a flurry of consolidations in the 1990s, when the California Legislature was threatening to rescind its delegated powers and force special district consolidations by legislative fiat. But since 2005, OC LAFCO has approved only one special district consolidation. The lack of results speaks volumes.

When the Grand Jury asked OC LAFCO if it had ever exercised its latent power to *initiate* a consolidation proposal on its own since passage of the Gotch Amendment (AB 1335) in 1993, OC LAFCO admitted that it had not. Moreover, since passage of the Gotch Bill, which also gave LAFCOs the power to initiate dissolutions, only one OC LAFCO-initiated project has led to the dissolution of a special district. Furthermore, OC LAFCO’s latent power to initiate a merger of a special district has gone untapped.

In sum, OC LAFCO has failed to utilize its own authority to *initiate* any consolidations, and it has achieved only one consolidation in the last ten years. It would appear, then, that “encouraging,” “fostering,” and “promoting” consolidations has rendered precious little. What OC LAFCO fails to see is that the Legislature has given it the very move needed to “break the stalemate”: the authority to *initiate* consolidations. (Pringle, 1997). OC LAFCO has been authorized to use the latent power since passage of the Gotch amendment in 1993. So far, it has chosen not to activate it.

OC LAFCO’s Mid-Game Gambit

OC LAFCO has declared that, “while boundary reorganizations continue to be appropriate and necessary in many circumstances, Orange County LAFCO has evolved over the past few years to also explore more non-conventional, interagency relationships and management strategies (e.g., shared services) that take advantage of greater economies of scale and scope with existing jurisdictional boundaries and governance structures. This shift has developed over several years through such OC LAFCO efforts as the Community Islands Task Force and the Governance Restructuring Committee” (Orange County, 2014-2015).

Consequently, OC LAFCO has shifted to “alternative strategies” to push special districts and cities to operate more efficiently. For example, OC LAFCO has developed the MSRs, Shared Services Agreements (SSAs), and FTAs. OC LAFCO has attempted to “reframe” its legislative mission and mandate as one that merely would require it to create “collaborative synergy” between cities, special districts through MSRs, SSAs, and FTAs” (CALAFCO, 2014). OC LAFCO has embraced “innovative management options” to encourage cities and special districts to collaborate “through regional cooperation and sharing services.” (Transforming Local Governments, 2013).

Thus, for the last ten years, OC LAFCO has focused on fostering improvements in service delivery through SSAs at the expense of concentrating on restructuring the very local governments that deliver that service. It has decided to use mechanisms such as SSAs to assist special districts and cities in achieving efficiencies through economy of scale. But these tools are but a means to an end: logical boundaries. (Gov't. Code section 56001).

Grand Jury's Conclusion

The Grand Jury believes OC LAFCO's ultimate legal duty is not to seek efficiency while maintaining the same boundaries, but rather to seek efficiency by *changing* boundaries. Whatever additional authority OC LAFCO may believe it has, or alternative strategies OC LAFCO's may wish to pursue, OC LAFCO still has the fundamental responsibility imposed by the CKH Act, which is to achieve efficiency through *changes* in boundaries, not just through collaborative efforts between entities who insist on *keeping* their boundaries.

The Grand Jury has concluded that OC LAFCO is not fulfilling its duties under the CKH Act. The initiatory power was delegated to OC LAFCO in 1993, and 20 years later it has failed to use it even once. OC LAFCO has failed fully to effectuate the policies underlying the CKH and to utilize the powers expressly delegated by the Act. It has abdicated its role and has allowed its initiatory power continue to go unused. The Grand Jury believes that as a result of rechanneling its efforts, OC LAFCO is no longer effectively pursuing the overriding State purpose for which it was created.

Annexation of Unincorporated Islands

Orange County is the sixth largest county in the United States—by population. In highly urbanized counties, municipal-type services, by definition, should be delivered by municipalities—not by the County (Gov't. Code section 56001). Counties should primarily be devoted to the business of conducting regional planning and providing core regional services on a countywide basis, such as the courts, elections, jails, district attorney, public defender, probation, social services, public health care, environmental protection, regional planning, and aviation.

OC LAFCO's Legal Duty

OC LAFCO's duty is to do what no one else is willing to do. As stated by Don Saltarelli, a former county supervisor and LAFCO commissioner, "LAFCO was set up to do what people, left to their own devices, do not do on their own. This is the Commission that has to do annexations and consolidations, which to me is something that urgently needs to be done" (Hall, 1997).

OC LAFCO's mandate is to effectuate the stated intent of the CKH Act, to wit, to streamline local government by restructuring it and modifying its boundaries, with a preference granted to accommodating growth through the expansion of the cities' boundaries, i.e., through annexation. The Legislature, in delegating its boundary-determination powers to county LAFCOs, expressly found and declared that a single multipurpose governmental agency, i.e., a city, is the best mechanism for establishing

and delivering municipal-type services in urban areas, whereas a limited-purpose agency, i.e., a special district, may best provide that single service in a rural area (Gov't. Code section 56001). Orange County decidedly is no longer rural.

Thus, the CKH Act recognized this bedrock principle. It mandated that municipal-type services be provided by municipalities. In addition, the CKH Act gave LAFCOs “powerful new tools” with which to forge ahead on the “*often-resisted path*” of expanding the boundaries of the cities to annex adjacent unincorporated areas (Commission on Local Governance, 2001). These tools include MSR, FTAs, and SSAs, and are but means to an end, i.e., annexation (Commission on Local Governance, 2001). By definition, SOIs designate future annexations (Gov't. Code sections 56378, 56430).

OC LAFCO's Recognition of its Duty

OC LAFCO readily acknowledges that annexations should proceed because it is “good government” and “the right thing to do” (Orange County LAFCO meeting, March 11, 2015). It continues to place a “high priority” on completing the annexation of all remaining islands (Orange County, 2014-2015; Orange County, 2013).

Promising Opening, but No Endgame

OC LAFCO's programs (UIP, IRP, UIIP, SP, and CTF), together with the County's programs (IAS, RSP), have resulted in the successful annexation of 47 unincorporated islands since 2000. Despite the program's success, there is still much work to be done. Indeed, OC LAFCO has yet to carry out the annexations of 30 unincorporated islands.

OC LAFCO's Mid-Game Gambit

OC LAFCO inexplicably has either discontinued or neglected to use programs that were vital in propelling the 33 annexation that took place from 2000 to 2014: the UIP, IRP, UIIP, SP, and CTF.

OC LAFCO's apparently focuses now on “helping make unincorporated islands whole and healthy from a municipal services perspective” and on “ensuring that OC residents receive equitable services, *irrespective* of boundaries.” This new goal of achieving “equity in municipal services between cities and unincorporated areas,” while allowing the islands to remain unincorporated, supposedly *replaced* the old goal of simply annexing the remaining islands to one of its surrounding cities to achieve that equity. Thus, OC LAFCO appears to have shifted the focus away from its legally mandated task of changing boundaries by viewing annexations as one of two alternative service-delivery “options” for the islands (Orange County, 2014-2015).

Apparently, OC LAFCO believes that this “shift from traditional boundary-centric models of annexations, consolidations, and mergers to more of a focus on the public as the end user, using strategic management practices such as shared service arrangements as effective tools, can pave the way for a new approach to municipal service reviews in OC” (Orange County, 2013-2014, p. 18). It is using MSR, SSAs, FTAs as substitutes, rather than springboards, for annexation. In other words, the

primary focus at OC LAFCO is *not* necessarily on *restructuring*, but on working *with*—and *within*—the existing structures and making intergovernmental arrangements that maintain or improve service levels and reduce service-delivery costs.

It appears, then, that OC LAFCO is no longer actively seeking to change boundaries, focusing its resources instead to work within the existing boundaries to achieve “an alignment of municipal services and capital improvements” between the unincorporated islands and their adjoining cities (Orange County 2014, April 9. p. 185).

Grand Jury’s Conclusion

The Grand Jury concludes that OC LAFCO has been lax in carrying out its statutory duty to carry out island annexations (Gov’t. Code, section 56001). OC LAFCO has retreated from its initial annexation efforts by allowing the CTF to go out of existence (Orange County, 2011; Orange County LAFCO meeting, March 11, 2015). OC LAFCO has failed to seize the opportunity to fully implement the legislative intent of the CKH Act.

Additionally, the Grand Jury believes that OC LAFCO’s redirection of its efforts from annexation to ensuring increased efficiency in municipal-service delivery to the islands through “alternative service-delivery options” may inhibit, rather than effectuate, the ultimate mandated goal of annexation (OC Policies and Procedures, 2014, pp. 184-185.) Similarly, the Grand Jury finds that by eliminating its Stakeholder Program, terminating the CTF, abandoning the IRP and paying only lip service to the UIIP, OC LAFCO has significantly reduced its effectiveness in achieving annexations.

The Grand Jury has determined that OC LAFCO has failed to pursue its legal mandate to complete the annexation of all islands within the County. “It requires proactive leadership from the Commission. The cities or unincorporated areas will not come to LAFCO. LAFCO should take the lead” (Orange County 2014, April 9).

The Grand Jury has also found that OC LAFCO has been remiss in not avoiding annexation stalemates—with complex, expensive, and contentious proceedings—by taking preventive measures. OC LAFCO has failed to plan ahead and install mechanisms to avoid creation of the isolated pockets in the first place. The Grand Jury finds that OC LAFCO was derelict in not working with the County to require that any new residential housing developments in unincorporated territories be preceded by the adjacent city’s extension of its sphere of influence to include it and irrevocable commitment to annex it within a reasonable timetable. Such a requirement would obviate the need for complex, expensive, and contentious annexation proceedings several years late.

The County’s Role Regarding Annexations

“The County has publicly stated that it wants to stop providing municipal level services and focus on a leadership role in the provision of regional services” because if County islands are annexed to cities, the County will no longer have to provide municipal-type services to those areas and can concentrate more on the provision of regional services and programs” (Orange County 2014, April 9).

The County has always recognized that cities are the most logical, effective and cost-efficient providers of municipal services. “Due to the fragmentation of islands throughout the County, municipal service delivery is less and less economical for the County and may be provided more efficiently by the adjacent city.” Furthermore, the County has acknowledged that it is “the most logical, effective and cost-efficient provider of regional services” (Orange County Board of Supervisors meeting, January 24, 2000).

For this reason, the County has declared that the strategic focus of all revitalization and service-delivery strategies should be on annexation (Orange County Board of Supervisors meeting, January 24, 2000). The County acknowledges that “annexations should connect the currently isolated islands to neighboring communities and cities.” (Orange County Board of Supervisors meeting, January 24, 2000). Making “annexation the strategic focus promotes the revitalization of both small and large islands.” (Orange County Board of Supervisors meeting, January 24, 2000).

The County recognizes that, when annexed, the island residents benefit from a higher level of municipal services, lower response times, and closer access to more responsive local government. The annexing city can gain sufficient revenues from the annexed territories through taxes to offset some or all of the costs of supplying the municipal services to the new territory. “Through annexation, cities become a reliable, stabilizing force for protecting residents’ interest and ensuring long-term maintenance of revitalization programs” (Orange County Board of Supervisors meeting, January 24, 2000).

Annexation of unincorporated islands greatly benefits the County because it enables it to divest itself of the provision of municipal services (plan-checking, planning and land use, animal control, parks, street maintenance, etc.) and allows it to focus instead on providing regional services, such as social services, the courts, regional parks, health care, and regional infrastructure. As county funding becomes more constrained and multiple service demands compete for funds, maintaining adequate levels of service for unincorporated areas becomes more challenging. Thus, the County will generally realize cost savings through island annexations.

The County Has Dropped the Ball

With its revitalization strategy in 2000, the County, in collaboration with OC LAFCO, made significant inroads into the task of annexing all remaining islands. The County’s strategy was to convince the island residents that long-term revitalization of their communities lay in their hands, but could only be achieved through annexation to an adjacent city (Orange County Board of Supervisors meeting, January 24, 2000). The County’s robust annexation efforts included offering infrastructure improvements, financial incentives, and promises to continue to provide resources to the island residents for a limited period of time.

Unfortunately, however, the County’s BOS-directed practice of working collaboratively and effectively with OC LAFCO was discontinued. The County inexplicably abandoned the far-sighted strategy that had been so beneficial in facilitating

the annexation process. Moreover, the County withdrew its concomitant investment of resources and funding to implement the strategy.

Grand Jury Conclusion

The Grand Jury concludes that by not continuing its CTF and RSP programs, the County has significantly reduced its effectiveness in facilitating the annexation of all remaining islands. Moreover, the County has also been derelict in not continuing to work with cities and the islands that lie within their SOI or investing in infrastructure improvements in these islands in order to speed up the process. Furthermore, the County has failed to assist OC LAFCO in its annexation efforts in that it has withdrawn the analyst who was on loan from the County's Financial Office.

In addition, the Grand Jury has determined that the County has been remiss in not pursuing an opportunity to push the island residents toward annexation by creating an assessment district in all unincorporated islands in the County. The County has not availed itself of a carrot-and-stick approach that would require the property owners to pay for the County's costs in providing municipal-type services to each unincorporated island. The Grand Jury finds that the County has generally missed many incentivization opportunities to further advance and speed up the annexation process.

Potential Obstacles to Completion of OC LAFCO's Duties

"LAFCOs' boundary and growth decisions are difficult when made in the face of great political headwinds. It is understood that some Commissioners and staff may be reluctant to step into this busy arena, citing concerns related to staff experience, available resources, complexity, and number of local projects and political considerations" (Commission on Local Governance, 2001).

Political Considerations

OC LAFCO policies seem to allow supervisor influence in what should be independent and objective determinations by OC LAFCO. In fact, its policies appear to allow a supervisor to have virtual veto power over any annexation efforts by OC LAFCO. One example is a policy requiring OC LAFCO to consult with a County Supervisor so he or she may affirm that he or she wants an island community in his or her respective district to be aligned from a municipal service and cost perspective and should provide LAFCO with a list of prioritized islands within his or her district (Orange County 2014, April 9. p. 186).

Practical Considerations

"Perhaps the most important challenge facing each LAFCO following its determination of goals is the ability to meet them. Each LAFCO must clearly evaluate the level of resources necessary to function effectively. There is no greater obstacle to the success of each LAFCO and the overall effectiveness of the CKH Act than under-budgeted, under-staffed, and under-housed local commissions" (Commission on Local Governance, 2001).

Giving Credit Where Credit Is Due

Over the past few years, OC LAFCO has been the recipient of awards acknowledging its role in governmental leadership and innovation. It has been recognized throughout the State for its forward-thinking approach to new models and management practices for local governments through a strategic approach to financing and delivering public services. It has reinvented itself by launching creative programs, such as Shared Services, Fiscal Trends Analysis, Community Islands Task Force, Optimal Service Territories, and the South County Governance Visioning Process.

The OC Grand Jury commends OC LAFCO on the outstanding work it has done and continues to do to bring all stakeholders together to discuss the sharing of services and other collaborative approaches to achieving efficiency in service delivery. The Grand Jury congratulates OC LAFCO on its proactive and innovative solutions, which have received statewide acclaim and recognition. The OC Grand Jury applauds OC LAFCO for its praiseworthy, trailblazing efforts.

The Law

In 2011, the Legislative Analyst's Office stressed that a problem common to LAFCOs is that of the workload being more than their current budget and resources can support. The basic message from the Legislative Analyst's Office was simple: "Don't underestimate, lest product delivery and organization effectiveness be compromised." The problem becomes particularly acute when staff is overwhelmed by applications flowing in from cities, special districts, and unincorporated areas (California State Legislative Analyst's Office, 2011).

LAFCOs have independent budgetary authority and must adopt a budget each year. LAFCOs are authorized to set their own staffing levels as well as their own budgets in order to fulfill their statutory duties (Gov't. Code sections 56380, 56381; OC LAFCO 2014-2015 Strategic Plan). OC LAFCO's funding is equally apportioned among the County, the 34 cities, and the 27 special districts. In other words, costs are shared equally by the three sectors represented on LAFCO (Gov't. Code section 56381).

"To properly create a budget, LAFCOs must have an understanding of the true costs associated with their operation. Budget authority gives each LAFCO the ability to reevaluate the manner in which they conduct business and to assess whether they wish to make changes such as relocating office space and adjusting the number of staff persons" (Commission on Local Governance, 2001).

Essentially, each LAFCO must consider all the costs when establishing its budget. "LAFCOs must consider the magnitude and cost to perform the requirements of the CKH Act, such as five-year SOI updates, labor-intensive MSRs, comprehensive FTAs, special district service studies, and conducting authority obligations" (CALAFCO, 2014). To this end, LAFCOs must develop comprehensive work plans each year to enable the commissioners to understand more clearly the demands that will be placed on staff (Commission on Local Governance, 2001).

“Without sufficient staff and resources, LAFCOs must remain in a *reactive* posture that often results in boundary and growth decisions being made in the face of great pressure. Indeed, some LAFCOs and staff are reluctant to step into this busy arena, citing concerns related to staff capacity, available resources, complexity, and the sheer number of mandated projects” (Commission on Local Governance, 2001).

The Facts

In the 1990's, OC LAFCO had a staff of four. By the millennial year, it had grown to eight in order to handle all the assignments. This, in turn, enabled OC LAFCO to accomplish a great deal in the first decade of this century, including the ability to reduce the number of unincorporated islands by half.

Through attrition, OC LAFCO has allowed its Spartan staff to dwindle back down to four people, consisting of an executive officer (Gov't. Code section 56384(a)), a project manager, a policy analyst, and an office manager / commission clerk. In order to do its work, OC LAFCO has to contract with several outside expert consultants, who provide legal, accounting, and other specific, ongoing services and who handle certain special projects (Gov't. Code section 56384(b)). Presently, OC LAFCO is working on seven “mandated” projects, including an annexation application, a detachment application, and a change-of-sphere-of-influence application. In addition, it is in the midst of its comprehensive, two-year preparation for the next cycle of MSR's for every city and special district in the County, and which are extremely complex, time-consuming, and labor-intensive. Moreover, it must work on its legislative policy guidelines, which were last updated in 1999. In addition, its internal policies and procedures are in need of a comprehensive update, audit, and review.

On top of this the OC LAFCO is heavily engaged in its Commission-initiated projects, which include the following: (1) South Orange County Governance Visioning Process; (2) Shared Services Program (Next Level); (3) Fiscal Trends Program; (4) Orange County Executive Group; (5) legislative advocacy; (6) CALAFCO membership, participation, and support; and (7) Coalition of California LAFCOs (CCL) membership, participation and support. Furthermore, OC LAFCO has many administrative projects on its “to-do” list, such as an audit and update, technology and communications upgrades, the preparation of quarterly budgets, and the preparation of legislative reports.

As stated by Chuck Smith, former OC LAFCO commissioner, “Consolidation of multimillion-dollar districts is no simple task. In fact, it is just as complicated and contains essentially the same elements as a private sector merger of two corporations. A great deal of work is needed to assure the stockholder, or in this case the ratepayer, that the consolidation will result in more efficient service, less cost, and more accountability. Expert studies must look at debt, assets, compatibility of operations, fee structure, employee pay scales, and other details” (Smith, former OC LAFCO Commissioner, LA Times, 1997).

“Completing all these tasks simultaneously requires substantial increases in research time, staff analysis, and public hearing preparation. This then results in the need for additional staff or the need to hire consultants. Increases in staff also result in

the need for larger quarters and additional supporting equipment, such as computers, furniture, and supplies” (Commission on Local Governance, 2001).

Grand Jury’s Conclusion

It appears to the Grand Jury that in order for OC LAFCO to seize the opportunity to fully implement the legislative intent of the CKH Act as discussed above. i.e., consolidations and annexations, its skeleton staff may be too small. If OC LAFCO is proactively initiating consolidations and aggressively advancing annexations, its present staff level may need to upwardly adjust to the staffing level that it had at the beginning of this century. As stated by the Chairman of OC LAFCO at a recent meeting concerning staff’s “overly ambitious” work plan. “We have to draw the line because there’s only four of you.” (Orange County LAFCO meeting, April 8, 2015).

There is the ever-pressing need to complete the remaining island annexations. There are consolidations to initiate. In addition, there is a city or two to be incorporated in the near future in South Orange County. As stated by Commissioner Do at a recent meeting, “it is evident that OC LAFCO needs more resources to do [its] job and to meet the mandate first.” (OC LAFCO meeting, April 8, 2015).

Therefore, the Grand Jury concludes that OC LAFCO staff may be stretched too thin. To complete all its ambitious tasks, to draw upon its untapped initiatory power to consolidate special districts, and to proceed with annexations of all remaining islands, while at the same time meeting its deadlines regarding the applications that are filed by cities and districts throughout the year, it might need to return to its prior staffing level.

Summary

OC LAFCO’s legal mandate is to coordinate logical and timely *changes* in local government *boundaries* that lead to reorganizing, simplifying, and streamlining governmental structures. Only annexations, consolidations, mergers, and dissolutions will lead to the realization of that charter. OC LAFCO has failed to seize the initiative and has been derelict in its duty to pursue its legal mandate all the way to checkmate.

After experiencing 50 years of phenomenal urbanization and population growth, Orange County still has outdated special districts that have outlived their purpose and unneeded, orphan islands whose residents should no longer be served by the County, but by the city in whose sphere of influence it lies. OC LAFCO has had 50 years to solve these problems, but has failed to do so. It is time to draw the line.

FINDINGS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation, titled "Orange County Local Agency Formation Commission (LAFCO): It's Time to Redraw the Line," the 2014-2015 Orange County Grand Jury has arrived at seven principal findings, as follows:

- F.1.** OC LAFCO's has failed to effectively fulfill its legislative mandate to proactively pursue *efficiency* of local governmental organizations by restructuring them and reshaping their boundaries in a logical, orderly, and timely manner.
- F.2.** OC LAFCO has failed to use its latent power to *initiate*, let alone obtain, a single consolidation since the Legislature delegated this authority to it 22 years ago.
- F.3.** OC LAFCO discontinued its Unincorporated Islands Program, Unincorporated Islands Incentive Program, and Stakeholder Plan, all of which enabled it to streamline and fast-track the annexation process.
- F.4.** The County of Orange has withdrawn assistance to OC LAFCO in its effort to annex unincorporated islands by terminating its robust Unincorporated Islands Revitalization and Annexation Strategy and by withdrawing the assigned analyst who previously was on loan to OC LAFCO to provide fiscal analysis and data in support of island annexations.
- F.5.** The County of Orange has failed to facilitate and assist OC LAFCO in its annexation efforts by not offering greater incentives to both the annexing cities and the islands to be annexed, such as infrastructure improvements, property-tax exchange, and cost-sharing agreements, through memoranda of understanding and pre-annexation agreements.
- F.6.** By requiring staff to check with the Orange County supervisor in whose district an island lies before commencing an annexation proposal OC LAFCO is risking a loss of independence and objectivity. .
- F.7.** OC LAFCO discontinued the Islands Community Task Force, which has impacted its annexation efforts.

RECOMMENDATIONS

In accordance with California Penal Code sections 933 and 933.05, the 2014-2015 Grand Jury requires responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled “Orange County Local Agency Formation Commission (LAFCO): It's Time to Redraw the Line,” the 2014-2015 Orange County Grand Jury makes the following six recommendations:

- R.1.** Orange County LAFCO should proceed to identify and prioritize special district consolidations and mergers, commence the necessary studies, and then *initiate* the appropriate petitions or proposals. (F.1., F.2.)
- R.2.** Orange County LAFCO should revive and reinstate its Unincorporated Islands Program and Community Islands Task Force, and it should expand its Unincorporated Islands Incentive Program and Stakeholder Plan to streamline and fast-track the annexation effort. (F.3.)
- R.3.** The Orange County Board of Supervisors should revive and reinstate its Community Revitalization and Annexation Strategy and dedicate an analyst from the County Finance Office, whose sole duties would be to assist Orange County LAFCO with its efforts to promote annexation of the remaining unincorporated islands. (F.4.)
- R.4.** The Orange County Board of Supervisors should assist OC LAFCO in facilitating and expediting the annexation effort by offering greater incentives to both the annexing cities and the islands to be annexed, such as infrastructure improvements, fiscal subsidies, MOUs, and cost-sharing agreements. In addition, the County should consider imposing a special assessment on the island property to help defray the County's costs of providing municipal services to those islands. (F.5.)
- R.5.** Orange County LAFCO's practice of deferring to the Orange County Supervisor in whose district an island lies should be changed to better allow OC LAFCO to fulfill its role independently and objectively. (F.6.)
- R.6.** Orange County LAFCO should revive and reconstitute the Unincorporated Islands Community Task Force and set specific goals to expedite annexations of all remaining small islands by a certain date and annexations of all large islands by another date certain. (F.7.)

REQUIRED RESPONSES

The California Penal Code section 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected official shall comment on the findings and recommendations pertaining to the matters under that elected official's control within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code section 933.05, subdivisions (a), (b), and (c), provides as follows, the manner in which such comment(s) are to be made:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section 933.05 are required from:

Responses Required:

The Orange County LAFCO Board of Commissioners is required to respond to Findings F.1, F.2., F.3., F.6., and F.7.; and Recommendations R.1., R.2., R.5., and R.6.

The Orange County Board of Supervisors is required to respond to Findings F.4. and F.5.; and Recommendations R.3., and R.4.

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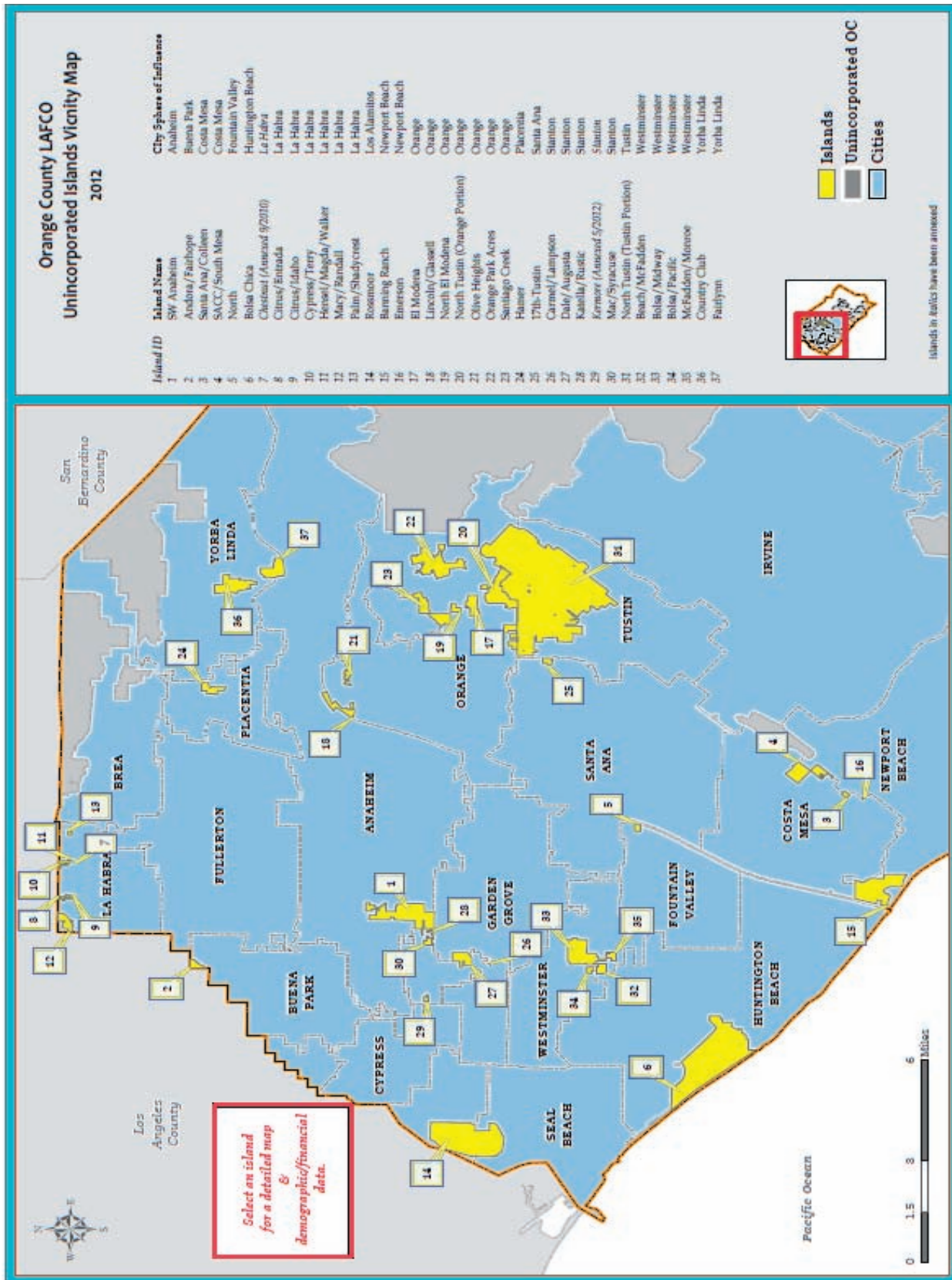
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APPENDIX

LIST OF SPECIAL DISTRICTS

1. Buena Park Library District
2. Capistrano Bay Community Services District
3. Costa Mesa Sanitary District
4. County Service Area 13 - La Mirada
5. County Service Area 20 - La Habra
6. County Service Area 22 - East Yorba Linda
7. County Service Area 26 – OC Parks
8. Cypress Recreation and Park District
9. East Orange County Water District
10. El Toro Water District
11. Emerald Bay Community Services District
12. Garden Grove Sanitation District
13. Irvine Ranch Water District
14. Laguna Beach County Water District
15. Mesa Water District
16. Midway City Sanitary District
17. Moulton Niguel Water District
18. Municipal Water District of OC
19. Orange County Cemetery District
20. Orange County Sanitation District
21. Orange County Water District
22. Placentia Library District
23. Rossmoor-Los Alamitos Sewer District
24. Rossmoor Community Services District
25. Santa Margarita Water District
26. Serrano Water District
27. Silverado-Modjeska Recreation and Park District
28. South Coast Water District
29. Sunset Beach Sanitary District
30. Surfside Colony Community Services District
31. Surfside Colony Stormwater Protection District
32. Trabuco Canyon Water District
33. Three Arch Bay Community Services District
34. Vector Control District
35. Yorba Linda Water District

MAP OF UNINCORPORATED ISLANDS



LIST OF ACRONYMS

BOS	Board of Supervisors
CALAFCO	California Association of LAFCOs
CSP	Collaborative Services Program
CTF	Community Islands Task Force
FTA	Fiscal Trends Analysis
IAS	Islands Annexation Strategy
IRP	Islands Revitalization Program
LAFCO	Local Agency Formation Commission
MSR	Municipal Service Review
SSP	Shared Services Program
SSA	Shared Service Agreement
MSA	Municipal Service Agreement
MSR	Municipal Service Review
RSP	Revitalization Strategic Plan
SOI	Sphere of Influence
SP	Stakeholder Plan
SS	Shared Services
SSA	Shared Service Agreement
UIIP	Unincorporated Islands Incentive Program
UIP	Unincorporated Islands Program