



2015 – 2016 Grand Jury Final Report



Cover Painting
"Crystal Cove Rooftops"
By Jeff Horn



ORANGE COUNTY GRAND JURY

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July 1, 2016

Honorable Charles Margines
Presiding Judge
Superior Court of California, County of Orange
700 Civic Center Drive West
Santa Ana, CA 92701

Subject: 2015-2016 Orange County Grand Jury Year

Dear Judge Margines:

On behalf of the 2015-2016 Orange County Grand Jury, I am pleased to present this compilation of the panel's civil investigation reports.

The panel is proud to have analyzed a number of social, technical, administrative, and public safety topics within its civil investigation reports and has published them regularly throughout the final quarter of its term to allow for public and media review. All the topics analyzed addressed current issues faced by local governments with certain topics continuing to evolve even after report publication. Our reports are well reasoned and the topics were effectively analyzed with findings and recommendations that are meaningful and topical as evidenced by the media coverage and comments engendered by the published articles.

The Grand Jury year was affected by the leadership provided by the Board of Supervisors in setting public policy which motivated us to take on difficult and controversial investigation topics as "watchdogs for the public." The Board placed a Campaign Finance and Ethics Commission measure on the June ballot which was overwhelmingly approved by the voters. The Board took its first major steps to address homelessness by purchasing a building for conversion to a homeless shelter, initiating the purchase of the former bus terminal in Santa Ana for the same purpose, and hiring a new "homeless czar." The Board also expanded the oversight role of the Office of Independent Review and finalized plans for a long awaited animal shelter at the former Tustin Marine Corps Air Station. The Board actions culminating in the creation of a Campaign Finance and Ethics Commission and the imminent plans to construct a new animal shelter were significantly influenced by prior grand jury reports.

While these actions of the Board are a good start, our reports for the year identified on-going problems which will require continuing leadership by our local elected officials. Specifically, our jails cannot continue to be repositories for the mentally ill especially considering the fact that they are deficient in facilities and staffing to address the needs of these individuals. The County's foster care system must be reevaluated to ensure that future generations can be nurtured and guided to lead productive lives. Seniors are the largest growing segment of our population. Increasing services to address their needs is a very high priority in the immediate future. The County's roads and highways are increasingly congested with improvements outdated before they are provided. Maintaining and expanding our transportation infrastructure, especially expanding opportunities for commuter and light rail, will be critical to maintaining the County's mobility and thereby allowing for economic growth.

Honorable Charles Margines

July 1, 2016

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An on-going public policy issue which merits separate mention is the controversy associated with the use of jailhouse informants which has adversely affected the constitutional rights of those accused of serious crimes potentially resulting in a death sentence. This controversy has called into question the practices of the Orange County District Attorney and the Sheriff-Coroner regarding the use of jailhouse informants, thereby affecting the credibility of the County's criminal justice system. The recent Informant Policies and Practices Evaluation Committee Report on the process involving the use of jailhouse informants recommended further investigation by an entity with subpoena power. This opportunity should be pursued.

The 2015-2016 Grand Jury achieved some significant accomplishments. It conducted a number of indictment hearings and a few investigatory hearings on cases presented by the Orange County District Attorney's Office. The Grand Jury worked with the Coroner's office to clarify and define its role and that of future grand juries in the Coroner's Review proceeding regarding cause and manner of in-custody deaths and the subsequent Inmate Death Review to look at ways which can reduce in-custody deaths. Additionally, the panel defined a method with the County Executive Office to effectively monitor the implementation of recommendations from civil investigation reports from prior years. And, the Grand Jury and the County's Information Technology Department initiated a virtual private network to facilitate the panel's efforts by allowing members to work remotely.

A backdrop to the work of this Grand Jury was that it was in a continual state of flux. A number of panel members resigned throughout the year for personal, family and health reasons. The alternates list was completely exhausted, and midyear training was required for alternates who had not been previously trained. The continual personnel changes made work difficult. Nevertheless, the panel was resilient and persevered to conclude a successful year. Of this, we are all very proud.

We would like to express our gratitude to you and our appreciation to the following Grand Jury advisors. Our success could not have been achieved without their full support and critical assistance.

Honorable Kirk Nakamura, Assistant Presiding Judge of the Orange County Superior Court
Honorable Richard King, Supervising Judge of the Central Felony Panel of the Orange County Superior Court
Sharon Durbin, Esq., Senior Deputy County Counsel
Brock Zimmon, Esq., Senior Deputy District Attorney
Ms. Theda Kaelin, Grand Jury Coordinator

In closing, I would like to express my gratitude to my colleagues who served on the 2015-2016 Orange County Grand Jury. We are proud of our accomplishments in service to the citizens of Orange County.

Respectfully submitted,



Peter Hersh, Foreperson
2015-2016 Orange County Grand Jury

PH:tk

Foreword

2015-2016 Orange County Grand Jury

Our Reports, Our Achievements, Our Activities

Our Reports

Pursuant to Penal Code Section 933, which requires the completion of a final report with findings and recommendations that pertain to local government matters, the Grand Jury completed twelve (12) civil investigations which focus not only on county government, but also city government, school districts, and a legislatively created agency. The Grand Jury also completed two of its reports on the Orange County jails pursuant to Penal Code Section 919 which requires an inquiry into the condition and management of the County's public jails.

The Grand Jury approached its investigative responsibilities with an emphasis on preparing quality reports as opposed to completing a specific number of reports. This allowed for all topics to be thoroughly researched and analyzed with realistic and workable findings and recommendations. Our panel took the extra step of conducting fact checking interviews during the preparation of a majority of the reports to enhance report credibility. Additionally, while not required by the penal code at this time, all published reports were subject to an exit interview with the entities investigated, again, to verify that facts in the reports were complete and correct. The 2015-2016 Grand Jury also held itself to a strict schedule which helped ensure sufficient time was available for each report to receive rigorous review. By mid-May 2016, 50% of our reports had already been published.

Below is a summary of the reports prepared by the 2015-2016 Orange County Grand Jury, which received comprehensive and favorable media coverage, particularly in The Voice of OC and The Orange County Register.

- **Gray Matters - A Look at the Orange County Office on Aging** – Concludes that funding is not keeping pace with the rate of OC senior population growth and subsequent increased demand for services.
- **To Be Continued...Follow-Up For Open Formal Grand Jury Report Responses** – Reviews the history of follow-up for unresolved Grand Jury report recommendations. Concludes that the CEO should reinstate an annual follow-up meeting with the Grand Jury to provide an update on all unresolved items.
- **Light Rail: Is Orange County on the Right Track?** – Examines the reintroduction of Second Generation light rail in San Diego, Los Angeles and Orange County. Provides in-depth analysis of light rail development efforts by OCTA and the cities of Santa Ana,

Garden Grove, Anaheim and Fullerton. Supports development and use of light rail in Orange County as an important option for public transportation.

- **Fostering a Better Foster Care System** - Examines the readiness of Children and Family Services (CFS) to implement new foster care legislation mandating that all children have the opportunity to grow up in loving and supportive homes. The study focuses on the efforts of CFS to recruit and retain stable and caring foster families especially for youth who are considered “hard to place.”
- **Sheriff's Temporary Detention/Holding Areas, Patrol Areas and Special Services** – Examines management and operation of temporary detention/holding areas in selected Orange County Superior Court Facilities, selected Sheriff's patrol areas and selected special services offered by the Sheriff, to include harbor, air and Homeland Security.
- **Changing of the Guardian: Life After the Reorganization of the PA and PG Offices** – Provides follow-up to concerns from a previous Grand Jury investigation. Focuses on leadership, staffing, case management, and other key components of the Public Administrator and Public Guardian Offices.
- **Drones: Know Before You Fly** – Identifies potential safety issues arising from the recreational use of drones and the importance of regulating their operation.
- **Our Brothers' Keeper: A Look at the Care and Treatment of Mentally Ill Inmates in Orange County Jails** - Examines the procedures of two primary agencies responsible for mentally ill inmates housed in Orange County jails, with an emphasis on the Intake and Release Center, applicable laws, community programs and the Department of Justice analysis and recommendations.
- **Orange County's \$4.5 Billion Unfunded Pension Liability & Retirement Plans** - Examines the pension liability that exploded during the past decade. Concludes that the County should have been more aggressive in reducing the liability, and should continue to be going forward.
- **Procurement – Big Budget, Low Priority** - Assesses the effectiveness of County Procurement in the de-centralized organizational structure. Examined County action/in-action on a number of Grand Jury and Audit recommendations.
- **Dealing with Asbestos in Orange County Public Schools** - Examines the Huntington Ocean View School District's experience with asbestos issues in several of their schools and identifies twenty recommendations to be implemented by all of Orange County's twenty-eight school districts based on Ocean View's experience.
- **Office Of Independent Review: What's Next?** - Covers the OIR changes in 2015 resulting in an expansion of authority approved in December 2015. Issues to be addressed for this work in progress include hiring all new OIR staff, and filling in many details on how to implement oversight to five law enforcement agencies.

Our Achievements

- The Grand Jury's work is a full time endeavor with a significant amount of members' time spent in front of a computer screen. Until the 2015-2016 term, all computer work was required to be completed in the panel room or by a cumbersome transferring of documents to and from an encrypted flash drive. In cooperation with County's Information Technology Department, the Grand Jury venue for work was expanded to include the home desktop and laptop through a virtual private network. With the use of a portable security device, the Grand Jury has been able to connect to the panel room network from home thereby increasing flexibility and convenience for completing the work.
- The Grand Jury processed and responded to a near record number of complaint letters from the public during its term. The letters contained allegations of criminal activity, personnel matters, and expressions of concern over local government being non-responsive to citizen needs. Before preparation of responses, the Grand Jury researched the issues raised to determine whether additional work on its part would be warranted even after formal letter responses were prepared. At least one complaint letter resulted in a civil investigation.
- A critical role of the Grand Jury from one year to the next is to monitor responses to findings and recommendations from the prior year's reports. Elected officials are required to respond within 90 days of publication to the findings and recommendation contained in a civil investigation report. After these initial response requirements, there is no further legal mandate for additional responses. The Grand Jury successfully negotiated with the County Executive Office (CEO) to provide an additional monitoring report in March of each year to address recommendations requiring ongoing follow up as well as to continue monitoring those recommendations which carry over multiple years before they are deemed to have been implemented. This process has now been included in the CEO's procedures manual so as staff changes occur, the process will continue annually.
- The Grand Jury expanded its role regarding the Coroner's review process detailing in-custody deaths. Heretofore, the Grand Jury's role was to attest compliance with the procedures set forth by the Sheriff-Coroner and the District Attorney for conducting Coroner's Review Hearings. Because the Coroner's review hearings were conducted solely for the purpose of determining the cause and manner of death, the Grand Jury has a limited role, attesting the procedures leading to this determination. At the urging of the Grand Jury, its members will be invited as citizen representatives to the Inmate Death Review meetings with an opportunity to provide comments and recommendations on steps that can be taken to minimize the potential for inmate deaths in similar situations.

Our Activities

The compilation of speakers and tours in which the Grand Jury participated throughout its tenure is provided below.

SPEAKERS 2015 - 2016 Grand Jury
Board of Supervisors
1st District: Andrew Do
2nd District: Michelle Steel (2016 Vice Chair)
3rd District: Todd Spitzer (2015 Chair)
4th District: Shawn Nelson (2015 Vice Chair)
5th District: Lisa Bartlett (2016 Chair)
City Manager Meet & Greets
Newport Beach - Dave Kiff
Anaheim - Paul Emory
Garden Grove - Scott Stiles/Alan Roeder
Grand Jury Foreperson Meet & Greets
Ray Garcia (2012-2013)
Dave Baker (2013-2014)
Paul Borzick (2014-2015)
County Counsel - Senior Deputy County Counsel Sharon Durbin
OC Sheriff/Coroner Department - Sheriff Sandra Hutchens
Health Care Agency - Exec. Dir. O.C. Health Care Agency Mark Refowitz
County Executive Office - County Executive Officer Frank Kim
District Attorney Indictment Training - Deputy D.A. Brock Zimmon
District Attorney's Office - Sr. Assistant D.A.s Mike Lubinski & Jim Tanazaki
Office of Independent Review - Steve Connolly
Orange County Community Activist - Shirley Grindle
Internal Audit - Dr. Peter Hughes
Orange County Transportation Authority - CEO Darrell Johnson
Coroner Presentation - Asst. Chief Deputy Coroner Bruce Lyle
Metropolitan Water District of Orange County - General Manager Rob Hunter
Brown Act Presentation - County Counsel Leon Page
Jailhouse Informant Presentation - Deputy Public Defender Scott Sanders
Grand Juror's Association of Orange County - President John Moohr
Public Defender - Public Defender Frank Ospino
Cal Optima - Paul Walters/Sara May Presentation
Courthouse Docent Tours - Hon. C. Robert Jameson, Ret. & Gwen Vieau
Orange County Jail Escape summary - Assistant Sheriff Steve Kea
Continuity & State of the County - CEO Frank Kim
Fair Political Practices Commision - Erin Peth and Galena West
IPPEC Report - Attorneys: Patrick Dixon, Robert Gerard, Blithe Cravens Leece

TOURS 2015 - 2016 Grand Jury	
The Office of Sheriff/Coroner	
OCSD - Jails	
	Central Jail Complex, IRC
	Central Jail Complex (Men's)
	Central Jail Complex (Women's)
	Theo Lacy Facility
	James A. Musick Facility
Juvenile Hall (Probation)	
Orange County Crime Lab	
OCSD Loma Ridge (Emergency Operations Center)	
Orangewood Children's Home	
OC Fire Authority	
Orange County Water District	
MWDOC Colorado River Aqueduct Tour	
MWDOC State Water Project Tour (Sacramento Delta)	
Old Courthouse/Historical Commission	
Dana Point Harbor	
Newport Harbor	
OC Sheriff's Department Helicopter Ride along	
Police Department Patrolcar ride alongs	
Coroner's Office Autopsy Observation	
Homeland Security Division	
OC Sheriff's Training Academy	
Collaborative Courts	

Epilogue

The 2015-2016 Orange County Grand Jury fulfilled its role as “watchdog” on behalf of the citizens of Orange County. The term also offered each member a tremendous educational opportunity. We learned about the functioning of the county, its agencies, city governments, special districts and much more. We were exposed to many of the people who enable our County and Cities to deliver the services on which Orange County residents depend. We experienced the positive impact to local government that was a direct result of citizen participation in democracy. Finally, we developed friendships that enriched our lives and made the journey fulfilling.

Grand Jury Historical Successes

The Grand Jury's success as a citizen watchdog can be seen in the positive changes that originate (in part or in whole) from Grand Jury report Recommendations. The following table illustrates some of the actions taken and positive outcomes stemming from Orange County Grand Jury reports issued during the past 3 years.

Issue of Interest	Title of Grand Jury's Investigation:	GJ Year:	Key Recommendations:	Initial Response from targeted Agency(ies) or Entity(ies):	Results to Date:
Humane treatment of animals in the care of the County	"The Orange County Animal Shelter: The Facility, The Function, The Future"	2014-15	<p>BOS should place high priority on selection, design and construction of a new animal shelter. Assign a staff member to focus on</p> <ul style="list-style-type: none"> * Act as project-manager to oversee the entire process to arrive at a new shelter facility or facilities. * negotiate with cities for commitment to utilize county shelter facility and obtain capital contributions. * Coordinate release and review of proposals for the design of a new facility 	The County has placed a high priority on this issue and is working on it; will study desirability of having regional Animal Shelters instead of a single one; responsibility for construction of Animal Shelter has been given to the Director of OC Community Resources.	<p>BOS has completed a 'land swap' to allow construction of a new shelter on land currently owned by the South Orange County Community College District. In addition to the \$5 million value of the land, the BOS has appropriated \$35 million to provide for design and construction by fall 2017. Design/architect selection is currently underway.</p> <p>The County also continues to explore new animal shelter management via outsourcing to a specialized provider and how to improve negotiations with OC Contract Cities.</p>
Follow-up for unresolved Grand Jury report Recommendations	"To Be Continued... Follow-Up for Open Formal Grand Jury Report Responses"	2015-16	County Executive Officer (CEO) should provide the sitting GJ Panel an update on all "open" GJ Report Recommendations from the previous years, as well as any updates/changes from the previous CEO's update.	Board of Supervisors (BOS) supports effort as presented by the CEO. First report completed April 2016.	CEO provided status updates to GJ in April 2016, and updates are now posted on GJ website. The CEO updated their internal process for tracking unresolved issues and promulgated them to all BOS agencies. CEO has agreed to continue the 6-month follow-up with the GJ for all unresolved Grand Jury reports into the future.
Campaign finance and Ethics oversight for Orange County	"A Call for Ethical Standards: Corruption in Orange County"	2012-13	The OC BOS should select a qualified and representative Blue Ribbon Commission to study ethics programs and recommend ethics reform program. BOS to ensure that Commission addresses: goals, legislation, advice, training, whistleblower hotline, enforcement, independence and jurisdiction.	BOS will not implement recommendations as they are not warranted.	<p>2015-16 BOS puts Measure A "Establish County Ethics Commission to Enforce County Campaign Finance and Ethics Rules" on ballot for vote in June 2016.</p> <p>Orange County voters approve the measure with 70% of votes cast.</p>
	"Ethics and Campaign Reporting: Why and How to Implement Stronger Oversight, Transparency, and Enforcement"	2013-14	Unlike many California jurisdictions, OC lacks independent campaign finance and ethics oversight. A proposition should be placed on ballot to establish OC Campaign Reporting and Ethics Commission. FPPC audits are not adequate.	BOS will not implement as recommendations are duplicative and costly. Allow FPPC audits to monitor.	See above

Grand Jury Historical Successes

Issue of Interest	Title of Grand Jury's Investigation:	GJ Year:	Key Recommendations:	Initial Response from targeted Agency(ies) or Entity(ies):	Results to Date:
Better surveillance technology for OC Jails and Juvenile detention facilities	"Detention Facilities Part I - Adult Jails"	2012-13 2013-14	OCSD should install CCTV systems to help prevent inmate injury/death and to assist in rapid Deputy response in case of incidents.	OCSD agreed but emphasized the high cost. Put on a schedule for installation, etc. thru FY2020.	Continued purchase & installation based on expense and logistical reality of moving inmates during installation. Expected completion during Fiscal Year 2020.
Improved oversight and management at Dana Point Harbor	"Dana Point Harbor Revitalization - 15 Years of Planning: What Has Been Learned?"	2013-14	Should replace management company that has been overseeing Harbor Revitalization for the past 15 years and assign to an agency, such as OC Public Works Dept., with the expertise to realize the revitalization intent.	Requires further analysis.	BOS releases Request for Qualifications on March 16, 2016; Interested parties must respond with a Statement of Qualifications by June 20, 2016. Respondent interviews will be conducted in July 2016. An RFP will be issued to shortlisted respondents sometime thereafter. The County/CEO/Real Estate is managing the RFQ. The RFQ stated: "The County is soliciting Statements of Qualifications (SOQs) from real estate development companies or teams, who could be selected to participate in an upcoming Request for Proposal (RFP) process, to be responsible to carry out the revitalization of the Harbor by designing, permitting, funding, constructing, renovating, operating, and maintaining portions of the Harbor both on the land and in the water,..."
Improving services for the mentally ill	"Orange County Mental Health: Crises Intervention Programs"	2014-15	BOS should provide additional Evaluation Treatment Services in South County, additional psychiatric beds, planned children's unit at CHOC and other suitable locations.	Unable to convert expanded Evaluation Treatment Services facility to Psychiatric Evaluation Services facility because of differences in licensing requirements. North and West County have higher call volumes than South County. Other recommendations implemented.	During the 17May16 BOS meeting, the Supervisors directed staff to identify and seek possible partnerships with medical facilities to allow for expansion of medical beds for mentally ill.
Treatment of mentally ill in community police interactions	"To Protect and Serve: A Look at Tools to Assist Law Enforcement in Achieving Positive Outcomes with the Homeless Mentally Ill"	2012-13	The County of Orange, Board of Supervisors should implement a pilot program for Laura's Law with the necessary accommodations to insure that the program will function effectively as an essential tool to help those with mental illness, thus benefiting law enforcement, and the citizens of Orange County	Requires further analysis.	May 2014 - BOS adopted Laura's Law. Orange County thus became the largest county in California to fully implement the law and a is model for Laura's Law in the State.
	"Mental Illness Revolving Door"	2014-15	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.	Wholly disagrees with finding. Intervention system is not inadequate. The HCA is in active discussion with the community, other Counties, and the Hospital Association of Southern California on expanding psychiatric emergency services.	Supervisors directed staff at a BOS meeting in April'16 to identify and seek possible partnerships with medical facilities to allow for more psych beds. Chairpers on proposed creating 2 additional crisis stabilization units – in North and South Orange County – to supply more psychiatric beds.

Grand Jury Historical Successes

Issue of Interest	Title of Grand Jury's Investigation:	GJ Year:	Key Recommendations:	Initial Response from targeted Agency(ies) or Entity(ies):	Results to Date:
Accessibility and transparency of financial, budget, pension, remuneration information	"Community College Trustees: Responsibilities & Compensation"	2013-14	Recommendations that the districts should: *Publish chancellor/trustee travel expenditures on website *Publish value of all district compensation received by each trustee on website *Publish chancellor's complete employment contract on website	Two of 3 districts have or will have implemented the Recommendations by end of 2014. The remaining has completed all but the 1st Recommendation for a total accepted-rate of 88.8% at the time of response.	North Orange Community College District and South Orange County Community College District stand out with very easy to find information on their respective websites.

Grand Jury

2015

2016



2015-2016 ORANGE COUNTY GRAND JURY

Front Row from Left to Right: Mike Harrison, Alf Lyle, Sabrina Low-DuMond, Marty Nohe, Kathleen Conwell-Doyle, Chuck Fay, Terence Lo

Middle Row from Left to Right: Anita Bolden, Margo Scott, Marie Whittington, Kathryn Cozza, Janice Horn, Jackie Brodsky, Joyce Zohar, Michael Morris

Back Row from Left to Right: Jay Humphrey, Mike Dmytriw, Barbara "BJ" Hunt, Diana Merryman, Alexis Taylor, Jim "Kaz" Kaczmarek, Peter Hersh

Not Pictured: Raquel Amezcua, John Rodriguez



2015-2016 Orange County Grand Jury Officers and Committees

Officers

Foreperson:	Peter Hersh
Foreperson Pro-Tem:	Mike Harrison
Secretary:	Sabrina Low-DuMond
Sergeant-at-Arms:	Marty Nohe
Parliamentarian:	Chuck Fay
Historian:	Michael Morris
Social Secretaries:	Janice Horn, Jackie Brodsky

Standing Committees

Members

Cities:	Marty Nohe (Chair), Terence Lo, B.J. Hunt (Secretary), Diana Merryman, Alf Lyle, Kathleen Conwell-Doyle
County:	Janice Horn (Chair), Marty Nohe (Vice-Chair), Jackie Brodsky (Secretary), Chuck Fay, Diana Merryman, Marie Whittington
Criminal Justice:	Alexis Taylor (Chair), Alf Lyle (Secretary), Kathleen Conwell-Doyle, Sabrina Low-DuMond, Terence Lo
Environment and Transportation:	Chuck Fay (Chair), Mike Harrison (Vice-Chair), Michael Morris (Secretary), Kathryn Cozza, Jackie Brodsky
Human Services:	Marie Whittington (Chair), Janice Horn (Vice-Chair), Alexis Taylor (Secretary), Sabrina Low-DuMond, Joyce Zohar
Ethics & Special Issues:	Joyce Zohar (Chair), Kathryn Cozza (Secretary), Mike Harrison, Michael Morris, B. J. Hunt

Support Committees

Members

Continuity and Editorial:	Michael Morris (Chair), Alf Lyle (Vice-Chair), Kathryn Cozza (Secretary), Sabrina Low-DuMond, Alexis Taylor, Mike Harrison, Janice Horn, Kathleen Conwell-Doyle, Marie Whittington, Diana Merryman
Promotion and Orientation:	Terence Lo (Chair), Marty Nohe (Secretary), Jackie Brodsky, B. J. Hunt, Joyce Zohar, Chuck Fay

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5. Sheriff's Temporary Detention/Holding Areas, Patrol Areas and Special Services
6. Changing of the Guardian: Life After the Reorganization of the PA and PG Offices
7. Drones: Know Before You Fly
8. Our Brothers' Keeper: A Look at the Care and Treatment of Mentally Ill Inmates in Orange County Jails
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11. Dealing with Asbestos in Orange County Public Schools
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GRAY MATTERS

A LOOK AT
THE
ORANGE COUNTY
OFFICE ON AGING



GRAND JURY 2015-2016

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EXECUTIVE SUMMARY

Orange County is turning gray. The Orange County senior population, currently estimated at 587,000, is projected to increase by nearly 100,000 in the next five years. According to the 2015 OC Community Indicators, the 65 and over segment of the Orange County population is the only age group increasing in numbers. The demand for senior services will surge accordingly, while demand for services for those over 75, along with the frail elderly, will rise at an even faster rate. As a result of this trend, the Orange County Grand Jury examined the Orange County Office on Aging and asked the question “Is the Office on Aging prepared to handle the demands placed on it by the rapidly expanding Orange County senior population?”

This investigation found that the Office on Aging is, indeed, forward thinking and very aware of the projected surge in service demand. However, senior services suffer at a strategic level in Orange County. The last County comprehensive study of the condition of older adults was in 2003. Services cannot be expanded to meet the need as long as the County assigns seniors a low priority in the annual budget process. As a small, very effective office, whose work is often hidden in the shadows of the larger County system, the Office on Aging needs and deserves higher priority from the executive levels of management and the Board of Supervisors to ensure future services keep pace with the growing demand. The County must explore new ways to make the funding more equitable and reliable for Orange County’s most vulnerable population.

Specifically, the Office on Aging must be a lead partner with the non-profit organizations that are subcontracted to provide direct services. Increased funds from Orange County must supplement federal and state monies to enable these operators to increase service capacity. Non-profit organizations maximize the cost benefit of the county general fund money by using volunteers to carry out the programs.

Budget adjustment would also include restoring Office on Aging staffing, which felt the impact of the recession and federally imposed spending reductions, to pre-recession levels, and adding staff to meet the growing workload. Other high priorities are instituting technology upgrades to its public information and assistance Call Center. Benefits include enabling greater outreach to the community, providing greater opportunity to seek available grant funds and connecting seniors to community based services to keep seniors at home and independent, thereby reducing premature institutional care.

BACKGROUND

Legislative History

The keystone federal legislation affecting the senior population is the *Older Americans Act*, signed into law on July 14, 1965. It established the Administration on Aging within the Federal Department of Health, Education and Welfare, and called for the creation of State Units on Aging to support a range of home and community-based services for older adults, such as meals on wheels, which is also known as home delivered meals, and other nutrition programs, in-home services, transportation, legal services, elder abuse prevention and caregiver support. These services help seniors maintain their independence in their own homes and communities, while avoiding costly and alienating hospitalization and long term care.

Through the years, the *Older Americans Act* has been renewed and amended, adding additional programs and coverages. In 1974, California recognized the Orange County Board of Supervisors as the governing board of the Area Agency on Aging for the County of Orange (officially designated as Planning and Service Area 22). The Board of Supervisors created the Orange County Area Agency on Aging, within the Community Services Agency in 1979 and renamed it Office on Aging (OOA) in 2002.

In a reorganization in March 2008, the Office on Aging became part of the OC Community Services department. Note that an unintended consequence of the March 2008 reorganization was the loss of transparency to the public for the Office on Aging Orange County budget. Prior to the reorganization, the Office on Aging data was available to the public through the county website budget archives as a stand-alone entity. After the reorganization, agency allocation was absorbed into the Community Services Agency published overall budget.

Current Legislative Climate

The *Older Americans Act* expired at the end of FY 2011 when Congress failed to pass required legislation. Senate Bill S. 192, *Older Americans Act Reauthorization Act of 2015*, would reauthorize the act for three years and improve benefits for older adults and their families. On July 16, 2015, the full Senate passed S. 192. In March, 2016 it was passed with some changes by the House and sent back to the Senate. Key elements of the Reauthorization highlight the importance of addressing those with greatest economic needs. While passage of this bill will restore funding to previous levels plus future growth adjustments, the funding lost during the recession cannot be recaptured. This gap leads to a permanent game of catch-up.

METHODOLOGY

The investigation consisted of interviews with senior executive staff of OC Community Resources and OC Community Services, management and staff of the Office of Aging, senior executives and staff of four major non-profit subcontractors, City of Irvine Senior Services representative, Long Term Care Ombudsmen, Meals on Wheels volunteers and staff, and senior clients of the various services, including recipients of home delivered meals, residents of Long Term Care facilities and users of the Senior Non-Emergency Transportation Service. Members of the Grand Jury participated in ride-alongs with the Meals-on-Wheels and the Long Term Care Ombudsmen. In addition, the Grand Jury examined many documents, which are listed in “Works Consulted” at the end of this report.

SCOPE OF THE INVESTIGATION

While the Office on Aging encompasses many senior programs, the Grand Jury concentrated on performance in four major areas. The first is the operational program run by the Office of Aging, Information and Assistance: a telephone Call Center and outreach activities to the community. The next three are the three largest programs the Office on Aging manages, but which are operated by subcontractors. Included are the Senior Nutrition Program, the Senior Ombudsman Program, and the Senior Non-Emergency Medical Transportation Program.

INVESTIGATION AND ANALYSIS

Orange County Demographics – Who is a Senior?

Statistics regarding the actual number of seniors living in Orange County vary, depending upon the definition of “senior.” Some programs target those who are 65+, some 60+. Different parts of the community may have a different threshold age for senior participation, with 55+, or even 50+, considered old enough. According to the 2010 US Census, there were 496,404 persons age 60 and older residing in Orange County. The California Department of Finance estimated that by 2015 the number increased by 18 % to 587, 240 persons. Their projection continues with an expected additional 17% between 2015 and 2020, for a 2020 total of 685,376. This is an increase in the 60+ population of 38% between the 2010 and the 2020 census. The flood of baby boomers that began turning 65 in 2012 is rapidly swelling the number of vulnerable elderly Orange County residents.

The Office on Aging – Introduction

The State of California has designated the Orange County Office on Aging (OOA) as the local governmental area agency to be the lead advocate, systems planner, and facilitator of services and programs for older adults and their caregivers within Orange County (2012-2015 Area Plan, May 1, 2012). This client population includes both those who live in the community and those in long-term care facilities. The mission for all California area agencies, as articulated in the California Code of Regulations, Section WIC 9400-9404, is:

To provide leadership in addressing issues that relate to older Californians; to develop community based systems of care that provide services which support independence within California's interdependent society, and which protect the quality of life of older persons and persons with functional impairments; and to promote citizen involvement in the planning and delivery of services.

The specific stated mission of the Orange County Office on Aging is:

To ensure that Orange County's older adults experience a high quality of life characterized by independence, safety, health, transportation, affordable housing, appropriate nutrition and social activity.

The Office on Aging is a multipurpose hybrid agency. It accomplishes its mission through three distinct functions:

- First, it is the central hub of information and assistance for individuals who wish to access the many programs available to seniors through government, nonprofit organizations and for-profit businesses.
- Second, the OOA distributes federal and state program funds earmarked for specific, well defined programs to contract providers and is required to monitor their compliance with all state and federal regulations.
- Third, it partners with many community organizations in outreach to the senior population.

The Office on Aging also provides some direct services and is the primary referral service connecting seniors with available resources and services. In a private industry parallel it would combine some of the functions of the marketing department and the program office. Despite these varied and important functions, Division Manager of OOA is a half time position, split

between the Office on Aging and the Veteran’s Service Office. Agency effectiveness is further reduced by chronic vacancies: two currently with one dating back as far as 2012. Refer to Appendix 1 for Office on Aging Organization Chart.

Follow the Money- Office on Aging Budget

The OOA is the final piece in a funding pipeline originating in Washington, DC and passing through Sacramento, where some state matching funds are added as the money makes its way to Orange County seniors. These monies are attached to specific older adult programs and have very strict rules governing how they are applied. The main piece, from the federal government, is distributed according to a formula which is based on the 2010 Census. This calculation applies heavier weighting factors to senior populations who are very low income and minority. Orange County follows this formula in its distribution of the funds. As a result of shifting population growth within the county, there is a struggle between agencies serving North and those serving South Orange County for their fair share of those funds. According to information provided by the current North County non-profit provider to the Senior Citizens Advisory Council at its November 13, 2015 meeting, the growth trend in Orange County is that South Orange County experiences faster growth in total senior population, while increasingly more seniors in the North and Central regions are classified as frail elderly.

The OOA is responsible for distribution and oversight of governmental funds to those non-profit agencies servicing Orange County seniors. The total OOA budget revenue combines Federal, State, Tobacco Settlement Revenue (TSR) pass through funds, Measure M2 and local Revenue. County of Orange General Funds bridges the gap between Office of Aging revenue and expenses. (See Table I).

TABLE I

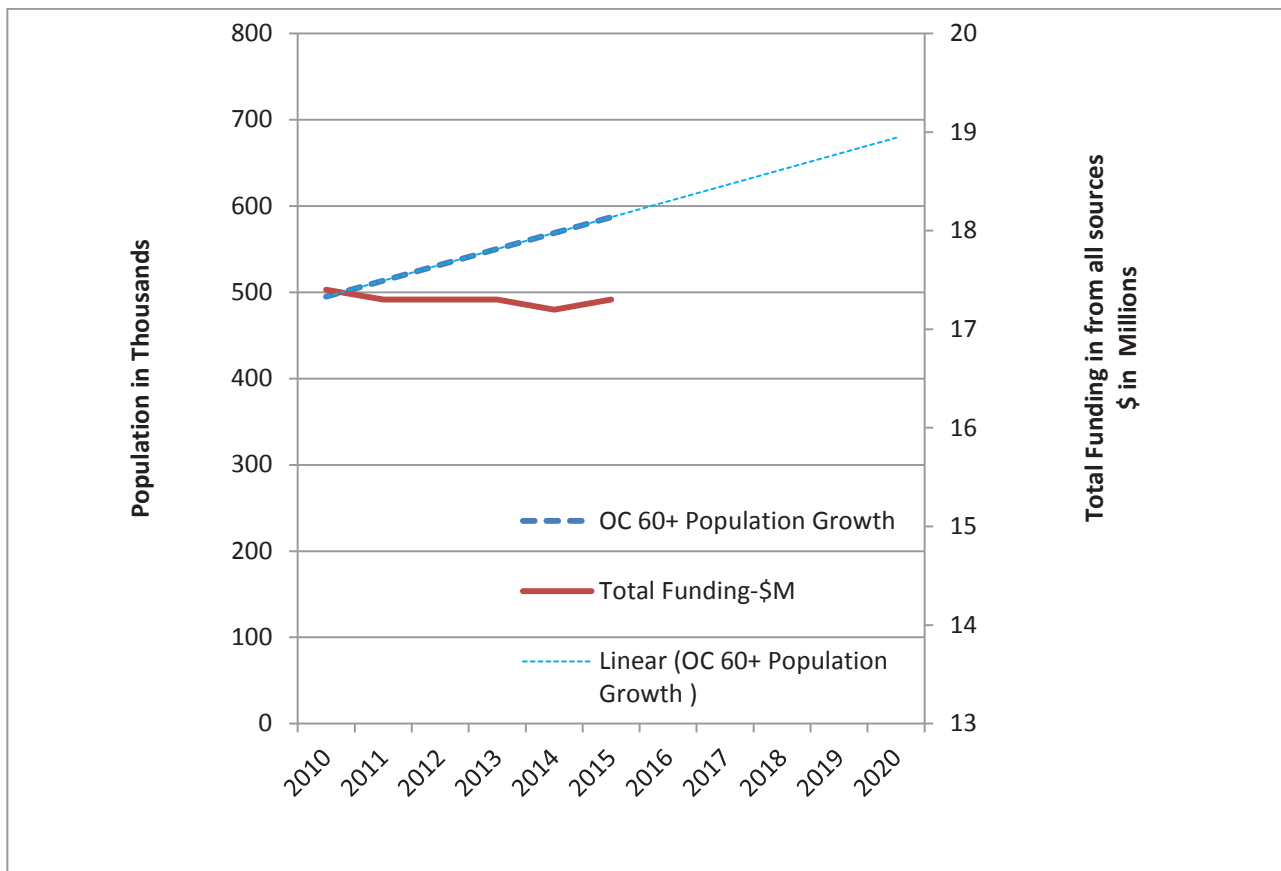
Revenue Sources for Office on Aging FY 2015-2016

Federal Older Americans Act	9,748,674
State	1,207,801
Tobacco Settlement Revenue (TSR)	1,509,516
Measure M2	<u>3,822,566</u>
Total Federal and State	16,288,557
Other funds	188,010
County General funds	<u>778,438</u>
 TOTAL REVENUE Office on Aging:	 \$17,255,005

The OOA awards contracts through standard county contracting procedures to providers. In FY 2015-16 the OOA redistributed \$14.8 million of the \$16.3 million that the county received from the Federal and State governments.

Although current funding for federal and state programs has restored budget reductions made during the recession years, it has not kept pace with the rate of increase in the senior population during that time. (See Figure 1).

Figure 1
Population Growth vs. Total Funding for OOA



Fragmentation of Services – Confusion Reigns

The OOA serves as the first point of contact, the entry door, for those attempting to navigate the fragmented senior services landscape. Orange County services available to seniors are imbedded within a variety of county government departments.

- Medical and mental health needs are spread between two different divisions within the Health Care Agency.
- Housing needs are addressed in another division within OC Community Resources.
- Adult Protective Services, which is responsible for Elder Abuse, is part of the Social Services Agency.

The overlap of names themselves of the public and private agencies leads to confusion for those seeking help. Among them are:

- Orange County Community Resources Department
- Orange County Community Services Department
- Office on Aging
- Council on Aging
- California Department on Aging
- Area Agency on Aging
- Senior Citizens Advisory Council

A senior or care giver inquiring about specific services, particularly when the situation is acute, can easily be confused and lost in a bureaucratic maze. The Office on Aging offers a centralized reference hub for all senior related services. It provides direction and facility referrals to the appropriate entity, both governmental and non-governmental organizations, through its own Information and Assistance Call Center operation.

Funding Issues

As shown in Table II, in FY 2010-2011, during the recent financial crises, the Orange County Community Resources Agency appropriated \$ 974,812 from the Orange County General Fund to the Office on Aging to be used for a variety of programs. In FY 2015-2016 that amount had dropped to only \$778,000, a reduction of nearly 20%. Meanwhile over that same five year period, the senior population grew from 496,404 to 587,240, an increase of more than 18%. (See Figure 2).

Table II also shows that five years ago the County General Fund expenditure for seniors was \$1.96 per senior per year. Today it is only \$1.32 per senior per year, a reduction of 33%. (See Figure 3). In 2005-2006, before the fiscal crisis, the expenditure was \$965,972 with a population of 437,972 for an expenditure of \$2.20 per senior per year.

Table II
Orange County General Funds for Office on Aging
vs.
Population Growth of OC Residents Age 60+

Fiscal Year	2005-06	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
General Funds, \$	965,972	974,812	773,902	773,902	740,946	755,765	778,438
Population Age 60+	437,972	496,404	518,713	537,527	557,482	578,549	587,240
Per Senior OC GF Expenditure	\$2.20	\$1.96	\$1.49	\$1.44	\$1.33	\$1.31	\$1.32

Data sources:

General Funds data from Orange County Budget

Population data from 2010 United States Census

Figure 2
Orange County Senior Population Growth
vs.
OC General Funds for Office on Aging

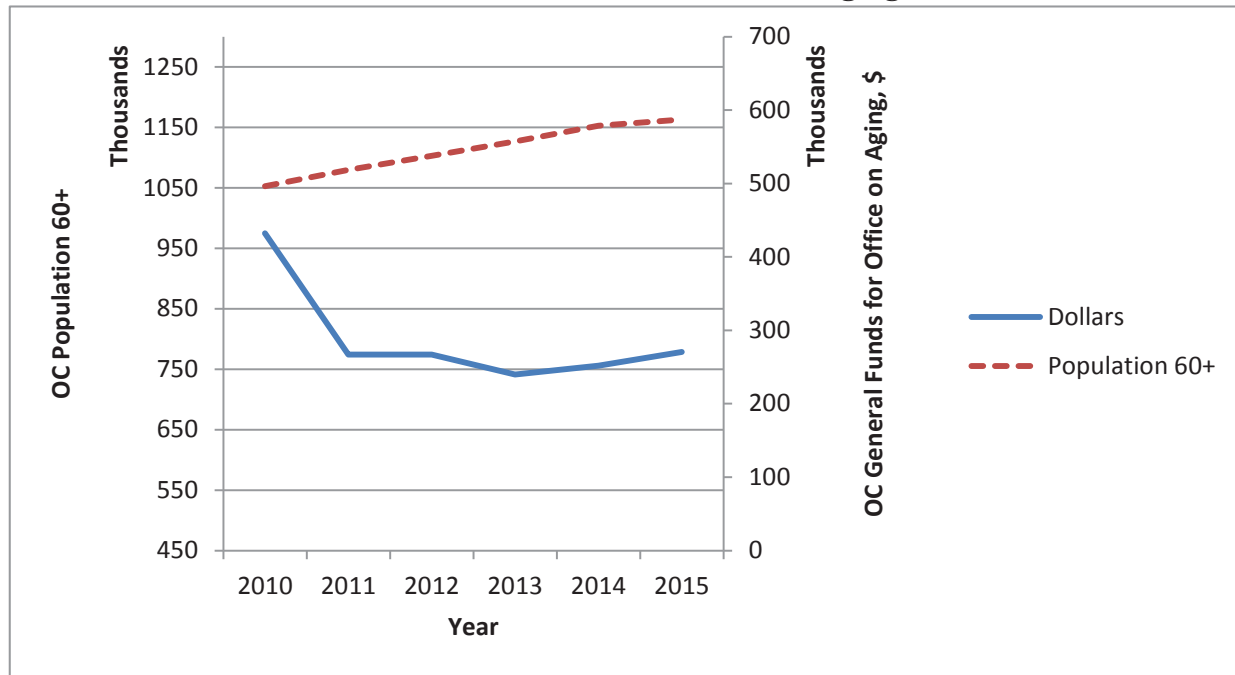
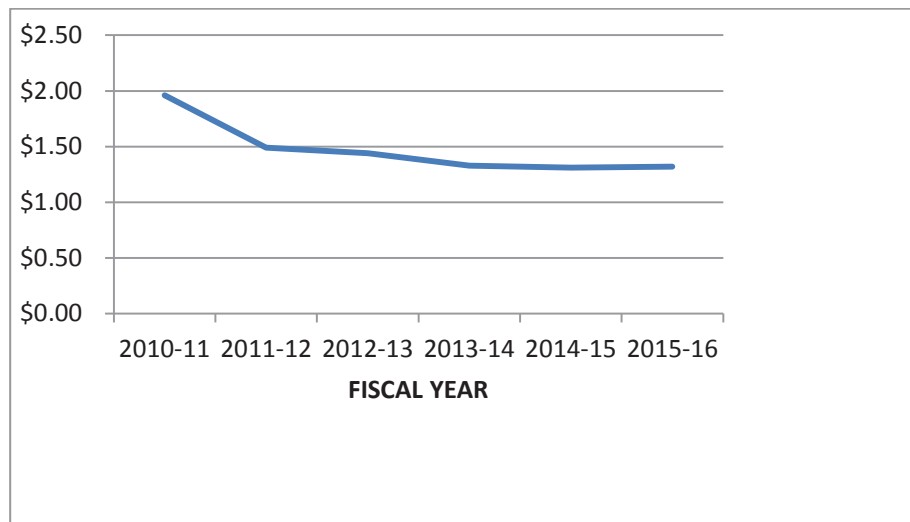


Figure 3- Orange County General Funds for Office On Aging per Senior per Year



Delivery of Service

While the Office on Aging encompasses many senior programs, the Grand Jury concentrated on performance in four major areas. The first is the operational program run by the Office of Aging, Information and Assistance: a telephone Call Center and outreach activities to the community. The next three are the three largest programs the Office on Aging manages, but which are operated by subcontractors. These are:

- **Senior Nutrition:** Home Delivered Meals, also known as Meals-on-Wheels, and Congregate Lunch programs, subcontracted to three non-profit organizations who serve Orange County in three specific geographic sectors that serve the entire county.
- **Long Term Care Ombudsman:** a senior advocate service for those in residential and assisted living facilities, subcontracted to one non-profit organization with service to all of Orange County.
- **Senior Non-Emergency Medical Transportation:** subsidized transportation services to routine medical and treatment appointments, subcontracted to two non-profit organizations who serve three specific geographic sectors that serve the entire county.

Office on Aging Information and Assistance (I&A) Call Center and Website

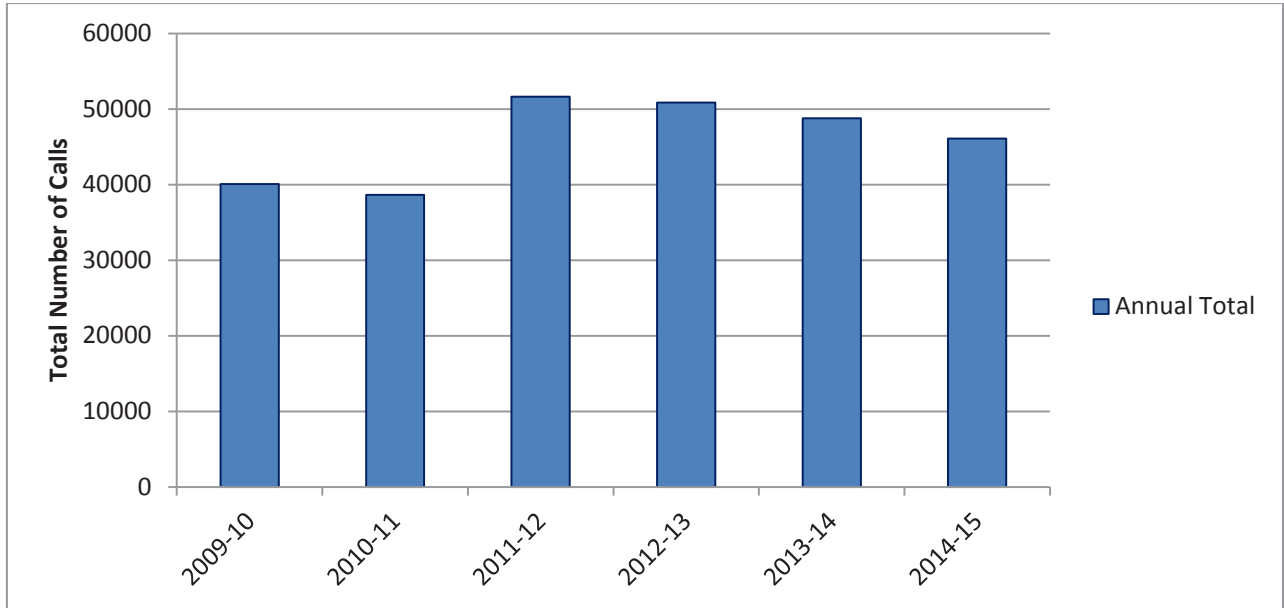
The Office on Aging onsite Call Center is a vital tool in untangling the complex network of services for county seniors, their families and caregivers. This center is equipped with application specific referral software which is compliant with the AIRS (Alliance for Information and Referral Systems) recognized industry standard. Trained personnel may provide the information and assistance in real time or through follow up phone contact. In addition to having bi-lingual/bi-cultural staff to serve Spanish and Vietnamese speaking callers, the Call Center also utilizes a service that provides access to other languages as needed, recognizing Orange County’s very diverse population. Clients contacting the Call Center can be directly connected with public and private community-based programs to meet their needs. I&A staff utilize a resource database to track client contact information and offer several resource options, as well as follow-up calls to ensure that clients were connected with appropriate services. The toll-free line acts as a single point of entry and can link a senior or care giver to one or more agencies who deal with different aspects of a complex issue. This service is a vital tool for the Orange County senior population, but those who need it most are often unaware of its existence. The Office on Aging may be reached by phone at 1-800-510-2020. The website is www.officeonaging.ocgov.com.

Information and Assistance Call Center Usage

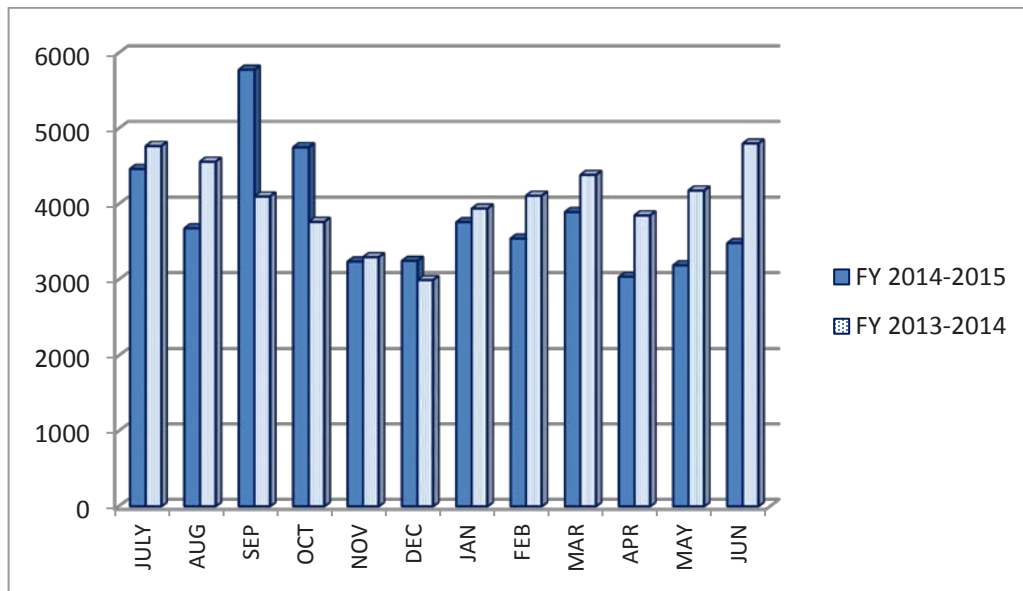
The OOA Call Center had a total of 46,065 call activities in FY 2014-15. A call activity is either a call to the center (inbound) or a call from the center (outbound). The number of calls passing through the Call Center is monitored and recorded as part of the Call Center referral software system. Data indicates that the call volume has declined slightly from a peak of about 51,000 in FY 2011-2012. (See Figure 4). Since the Call Center is a demand-response service, a person will only call if he/she is aware of the Call Center. It is likely the peak that occurred in FY 2011-12 is due to increased outreach efforts funded with a grant from the Aging and Disability Resource Connection (ADRC) during that year.

The referral software also produced data broken down by month. This allows comparison from year to year of surges in requests for information and assistance. The data show that in 2013 there were more calls during the summer months of June, July and August. In 2015 more calls were handled in the fall months of September and October. (See Figure 5). Incoming and outgoing volume patterns are also unpredictable and do not necessarily track each other. See Figure 6 for the pattern of incoming and outgoing calls during FY 2014-2015.

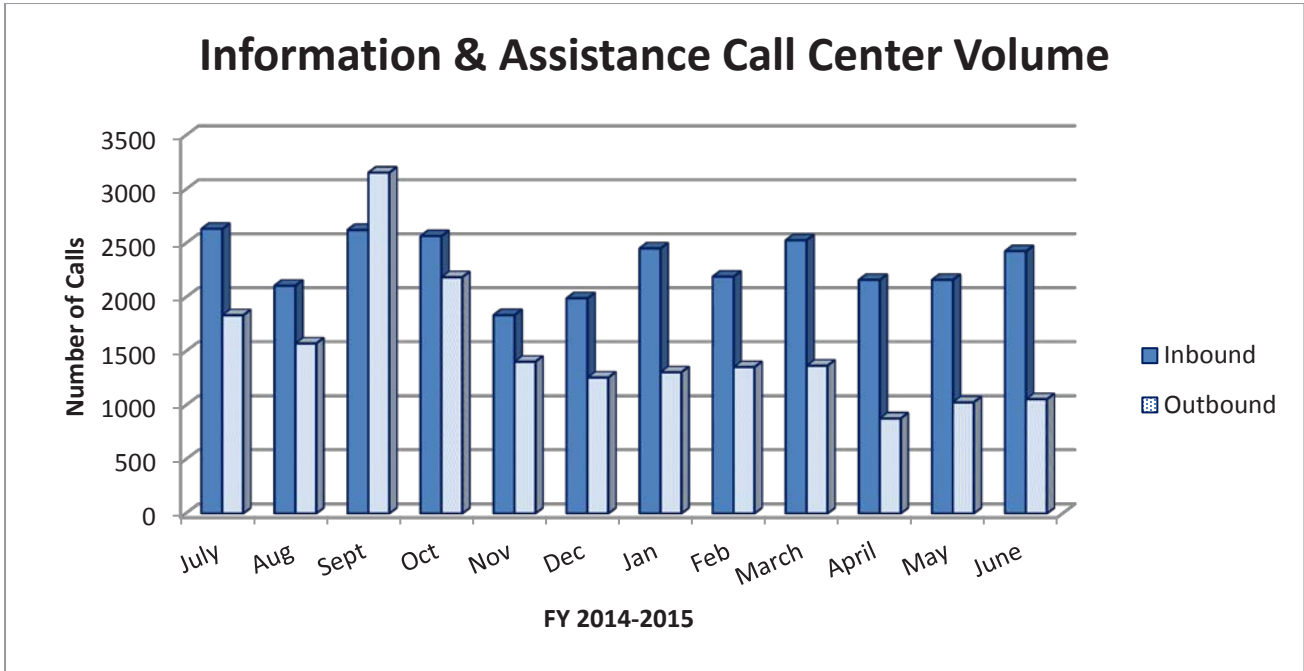
**Figure 4-Information & Assistance Total Call Center Volume
FY 2009-10 to 2014-15**



**Figure 5 – Comparison of Call Center Total Volume
FY 2013-14 vs. FY 2014-15**



**Figure 6-- Information & Assistance Call Center Volume
FY 2014-2015**



The Office on Aging website has had a steady increase in users since January 2013. The online resource directory page is consistently the second most viewed OOA webpage every month, suggesting that the community is augmenting traditional phone usage with online resources. The website needs updating in content and technology to reflect that current users are more technologically proficient and expect current information to be posted. An on-line chat function would also enhance the functionality of the website.

Staffing the Call Center

The OOA software statistics shows that the Call Center handles an average of 80-90 calls per day. While the average length of each call is 3-4 minutes, some callers are on hold for half an hour or more, depending upon staffing levels. During peak periods, particularly at winter holiday time, it receives as many as 120 calls per day. A wall mounted screen displays a running total of the number of calls handled that day and also shows the number of calls which went unanswered. During a visit to the Call Center 40 calls were answered, while seven were unanswered for a 15% abandonment rate. Call Center personnel confirmed that this is typical, but that the target for unanswered calls is 10%.

A key reason for dropped calls is unfilled staff positions. Of the five authorized staff positions available to operate this center one position has been vacant since 2012.

Office on Aging Outreach

One task of the OOA is educating the senior Orange County population about the host of services available to them. As a typical example, in the month of October, 2015, the OOA engaged in five local outreach events, attended by a total of 1,027 seniors. In order to reach as many seniors as possible, the OOA also cosponsors and coordinates large scale events with stakeholders, including the Board of Supervisors and non-profit organizations. Budget constraints hamper this very effective and efficient means of speaking to seniors. Funds are not available to enable the OOA to hold these large events every year in each of the county areas. In 2015 the Office on Aging participated in one large event, the South County Senior Summit, held in Laguna Woods, cosponsored by the District 5 Supervisor. Over 1000 seniors and other interested voters attended this event. A similar North County Senior Summit was held in 2014. Outreach efforts to this group of graying voters would be greatly improved if the Office on Aging coordinated an event with each of the Supervisors on the Board of Supervisors to hold an event in each district once a year utilizing the Board members's office funds. However, these events are labor intensive and, without additional staff, impact the ability of the existing Office on Aging staff to perform their regular duties.

Senior Nutrition Program

The Senior Nutrition program targets "food insecure" seniors. There are nearly 80,000 adults age 60+ living alone in Orange County. Those numbers increase each year and it is expected that in just five years there will be 160,000. Many of those are insecure because of physical, mental, and/or financial limitations. These restrictions make it difficult or impossible for them to obtain food or meals on a regular basis, further impairing their health and safety.

According to county providers, the Home Delivered Meals Program (sometimes known as Meals-on-Wheels) serves over 1,100,000 individual meals annually to more than 2700 individual Orange County seniors. The purpose is to provide healthy meals seven days a week to those medically qualified seniors who are homebound. While, meals are delivered five days a week, meals for the week-end are left with the Friday delivery. This program is a major tool in achieving the goal of stakeholders from all levels of government. That goal is encouraging aging-in-place. As a result of this valuable program, capable seniors have been able to avoid placement in expensive long term care facilities when they no longer have easy access to food.

All clients in the Home Delivered Meals (Meals on Wheels) program are screened for eligibility, which includes physical limitations, age and self-care ability. Federal regulations prevent means testing of the recipients, although there is a requested “donation” of up to \$ 6.50- 7.50 per day to help defray costs. Those unable to pay receive their meals free of charge. There is also a full pay program, at a cost of \$10/ day, for those who do not qualify under the guidelines.

Those who have sufficient mobility to visit local senior centers may take part in the Congregate Lunch program served at a total of 37 senior centers around Orange County. The Congregate Lunch program provides both a nutritious lunch and social interaction to those who are still mobile, but may no longer be willing or capable of preparing food for themselves on a regular basis.

Waiting lists vary greatly. At present there is no waiting list in South County, but North Orange County has a wait list of 200 people, with most in Santa Ana and Anaheim. The federal and state governments hand down complex, demographic based funding formulas using the 2010 Census. They do not adjust for shifts in local senior populations between censuses. In addition, two charitable foundations in the North region redirected major grants away from senior care toward children in 2014. The loss of this money will exacerbate the situation in the North, impacting day-to-day planning and allocation of resources.

Observations of the Home Delivered Meals Program

Providers sub-contracted to the Office on Aging operate three central commercial kitchens to create and prepare the meals. One serves South County, one serves North County and the City of Irvine serves Irvine. A dietician at each site creates the menus and oversees compliance with nutrition regulations. From the commercial kitchens, the meals are dispersed by truck to senior centers throughout Orange County. Volunteer drivers pick up the meals at the senior centers and deliver them to individuals at home.

Members of the Grand Jury accompanied volunteers from different regions in the county on their meal delivery routes. In one region, hot lunch meals packaged with cold dinner and breakfast meals are prepared at a subcontracted commercial kitchen and delivered to a local senior center in insulated bags. Volunteers then deliver the meals along an assigned route. Some customers on the route receive meals five days a week, while others choose only two or three times a week.

In that same region, one senior center distributes meals to approximately 75 home-bound clients each day. There are nine routes with 6-9 clients in each route. The routes operate five days a week, requiring a total of 45 volunteer drivers. According to representatives of the non-profit organizations, it is sometimes a struggle to find enough volunteers. If a route is uncovered, clients do not receive their meals and are put on a waiting list. A member of the Grand Jury

accompanied a driver to the six clients on his route. The clients visited included a 97 year old woman living with a home care provider and a couple consisting of a fragile husband and his wheel-chair bound wife. In this example, all of the clients had nothing but praise for the service. The only complaint heard had to do with the type of food provided – one client bemoaned the lack of sauerkraut in her meals.

In another program, a microwaveable frozen dinner, prepared by the contactor's own off-site commercial kitchen, is packaged with a cold lunch and breakfast. The Grand Jury visited the commercial kitchen which prepares the meals using purchased, not donated, food. The kitchen appeared to meet the strict cleanliness and documentation standards of a hospital kitchen. Several members of the Grand Jury took part in ride-alongs with drivers delivering meals.

The City of Irvine operates its own on-site commercial kitchen at the Lakeside Senior Center. About 100,000 meals are prepared each year with over 54,000 meals served to 186 individual, unduplicated seniors provided through the Home Delivered Meals (Meals on Wheels) program. Over 1,000 home delivered meals are provided weekly by more than 150 volunteers, covering over 11 routes. Twenty thousand meals per year are provided for the very popular Congregate Lunch program at the Lakeview Senior Center and another 20,000 meals provided to the Adult Day Care Facility co-located with the Lakeview Senior Center. All meals are “no added sugar”, low-sodium and meet the Nutritional Daily Allowance guidelines for older adults.

It is obvious that clients not only trust their volunteer driver, since the doors were left open at most of the homes, but that the driver becomes a welcome friend and visitor to lonely, fragile aged. The driver is also another pair of eyes and ears monitoring the condition of the client, reporting any changes in physical and/or mental condition through the provider staff to the Office on Aging. The driver is also required to report any suspected elder abuse. This service allows many seniors to age at home, instead of needing to go to assisted living or nursing facilities.

Long Term Care Ombudsman Program

Ombudsmen investigate all complaints from residents in long-term care facilities. Ombudsmen work to resolve problems and concerns of individual residents by creating a presence through regular unannounced visits, monitoring conditions and care, and providing a voice for those unable to speak for themselves.

The Long-Term Care Ombudsman Program (LTCOP) serves 1,100 care facilities for the elderly in Orange County. These include 75 large assisted living facilities and nearly 1,000 six bed Residential Care Facilities for the Elderly (RCFE).

In 2015 there were three times as many Residential Care for Elderly homes (RCFEs) in Orange County than there were thirty years ago. Ten percent of all California RCFEs are located in Orange County. Only Los Angeles County has more. These state licensed RCFEs are located in single family homes throughout the county and are indistinguishable from any other residence in the neighborhood. A maximum of six residents live in each RCFE and receive around the clock care from a team of care providers. The team usually consists of two people, but there is no minimum number required by the State Licensing Board. Most residents are elderly with varying degrees of dementia and/or Alzheimer's disease and are either alone with no relatives nearby or can no longer be cared for by family. These RCFEs are profit centered businesses, which depend upon reputation to be successful. (Non-profit ombudsman provider)

In the past, most of the county's facilities had an assigned Ombudsman making regular announced and unannounced visits, which included building relationships with the residents. As a result of funding deficiencies, 160 facilities with 960 residents did not have an assigned Ombudsman in 2013. The result was a decline in the complaint resolution rate from 82% in FY 2010-2011 to 66% in FY 2013-2014. (OOA Area Plan Update, 2015-16)

As a state program, the Long-term Care Ombudsman Program has advocated two separate pieces of legislation. One bill would have increased the number of required inspections and oversight by the licensing agency. The second was to restore funding to the pre-2008 levels. Unfortunately, neither bill made it past the governor's desk. At that time, a grant from a generous corporate sponsor allowed Orange County's primary non-profit ombudsman provider to fill in that gap. In 2014, for the first time in the history of the program, 100% of the facilities in Orange County had a designated Ombudsman, up from 85% one year ago (Non-profit ombudsman provider). While the program has always been responsible for investigating complaints and abuse allegations, a designated Ombudsman in each facility insures a more persistent presence via announced and unannounced visits. The Long-term Care Ombudsman Program continues to be the only program protecting all the residents of Orange County in long-term care facilities. However, such corporate funding is not predictable or guaranteed and leaves a significant number of seniors vulnerable in its absence.

Ombudsman Program Structure

A single non-profit organization under subcontract to the Office on Aging is the only agency in the state providing countywide Ombudsman protection. It has been under contract since the inception of the program in 1973. This agency recruits, trains and monitors Ombudsman volunteers. Currently the Ombudsman program has 27 paid part time staff and a volunteer base of 78.

Each Ombudsman, whether paid or volunteer, receives 36 hours of state-mandated training at the non-profit agency's offices plus another ten hours of field training. Ombudsmen make unannounced visits to each facility once a month and attend regular resident council meetings at the assisted living facilities.

Office on Aging Programs in Conjunction with the Ombudsman Program

The Office on Aging is currently conducting a pilot Music Therapy Project. A small group of 25-30 residents are being followed for six months to see if music therapy enhances their responsiveness and quality of life. If the pilot program is successful, the provider will apply for a grant to expand the program. The provider is also working with the State Ombudsman Office on a plan to reduce the use of psychotropic drugs in skilled nursing facilities. The Office on Aging is working with the Alzheimer's Association and the University of California, Irvine (UCI) to bring education and training to assisted living facility staff on the care and well-being of residents with dementia. There is currently no specific program in place to educate the administrators and caregivers in the small 6 bed facilities about working with dementia residents.

Observations of the Ombudsman Program

Ombudsmen are indispensable eyes and ears, calling attention to below standard elder care. As a result of Ombudsman efforts, most recently two RCFEs in Anaheim, as reported by the Orange County Register on February 11, 2016, had their licenses revoked. The Orange County Grand Jury accompanied Ombudsmen on their routes to both RCFEs and assisted living facilities across Orange County. The Grand Jury observed how the Ombudsmen checked the physical condition of the facilities, the physical and emotional condition of the clients and how they conducted their inspections and reporting. The Ombudsmen were queried about their training and any barriers to the performance of their duties. One of the most frequent comments was the amount of paper work required. Since most of the Ombudsmen are volunteers, this was cited as one of the reasons that potential Ombudsmen who completed the initial training course did not continue to become Ombudsmen. The Office on Aging should partner with its non-profit ombudsman provider and the California Department of Aging to explore if the reporting system could be accessed from a tablet or mobile phone. This improvement would allow the Ombudsman to immediately write a report after a visit.

The quality of volunteer Ombudsmen varies. At one end of the spectrum were dedicated, caring individuals, who connected with each resident in the facility. At the other end, the Grand Jury also found volunteers who followed their training with regard to compliance with paperwork and interaction with facility management, but, during the period of the Grand Jury's observation, were observed to do little to cultivate a trusting relationship with their clients. The Ombudsman program is experiencing an attrition of volunteers because of relocation and retirement. A

smaller pool of volunteers may make it increasingly difficult to maintain high volunteer standards. Much more needs to be done by the County of Orange to assist in the recruitment of Ombudsmen.

Senior Reference Guide

The Ombudsman non-profit agency contracted with OOA produces a senior services reference handbook called “Answers” outside of its county contract. This publication is an alternative to the Office on Aging Call Center and website, which sometimes can be challenging for seniors to use. The non-profit agency funds its production with no support from the Office on Aging other than a paid advertisement. Since it is basically an extension of the Office on Aging outreach function, it should be integrated with that effort and receive funding from the Office on Aging. Budget constraints at the non-profit agency prevent this publication from being more widely available. The OOA should partner with the non-profit agency to provide funding to produce sufficient copies of this resource for all seniors who are interested.

Senior Non-Emergency Medical Transportation Program

The Office on Aging administers the Senior Non-Emergency Medical Transportation (SNEMT) program, providing approximately 135,000 medical-related trips for approximately 2,000 unduplicated Orange County older adults who lack other transportation options. (OOA Area Plan Update 2015-16).

Orange County is divided into three specific geographical SNEMT regions covering the entire county: North County, Central and South County. In accordance with standard county contracting procedures, the OOA selects a provider in each region to provide the transportation services. Providers can cover multiple regions.

Fifty to sixty percent of Senior Non-Emergency Medical Transportation participants use the service for recurring dialysis appointments. Chemotherapy, physical therapy and doctor’s appointments account for the rest. Seniors can reserve transportation a month in advance. Because dialysis is often on a three day a week schedule, service is available from 4 AM six days a week, including Saturday. There is currently no waiting list for service, except for Saturday. There is a \$2 fee, waived for low income clients. There is a 15 mile limit for trips, but there are exceptions on a case by case basis.

The number of SNEMT trips in North and Central County has increased by a factor of six over the past three years. There were 20,000 trips in 2012 in Central and North areas; there were 120,000 in 2015. (SNEMT Contractor)

According to the OOA, customer complaints are rare, amounting to less than five a year. There is a procedure for customers to report complaints to the subcontractor. The subcontractor investigates and attempts to resolve the issue. It is also required to report the complaint to OOA. Drivers originate some complaints, most often involving safety issues; such as, customers are not cooperating in wearing their seatbelts. Others originate with customers, who most often complain about pick-up times. Accidents are required to be reported to the County Risk Management Agency, but there were no accidents in 2015.

The Office on Aging is required to physically inspect the vehicles used in the SNEMT program. Although this is a technical, mechanical inspection, it is currently assigned to an Administrative I level employee at the Office on Aging. Another duty of the Office on Aging is mileage verification of trips taken through the SNEMT program. Even though performed through sampling of 10% of the total trips, it remains a labor intensive effort, since the start and end location of each trip, as reported by the subcontractor, must be entered manually into MapQuest or similar software.

As another example of the fragmentation of senior services, the Orange County Transportation Authority (OCTA) offers its own paratransit transportation program, ACCESS, funded by the Americans with Disabilities Act, for the disabled of any age, including qualified seniors. Although OCTA is the county's public transit service, SNEMT is considered a social service program because of its funding source, and, therefore, is not administered by OCTA. The SNEMT program is funded by County Measure M2, Tobacco Settlement Revenue, and a grant through OCTA from the federal New Freedom Program. However, the New Freedom funds ended in September of 2015 for a loss of \$171,184 to the SNEMT program. Although some seniors may be eligible for both programs, there is no coordination to maximize accessibility or service.

Public – Private Partnership

According to non-profit organizations, the revenue from governmental sources, including the OOA, does not meet the current expenditure necessary to meet current demand. The non-profit organizations attempt to bridge this gap with charitable donations from individuals, corporate sponsors and voluntary donations for service from clients. They report that it is difficult to fill the funding gap in the present environment and will be an even greater challenge as the client population increases, becomes older and more frail. The thinking is that since the economy has

recovered and is doing well, less government help is needed. Those on fixed incomes have suffered in the low interest rate environment and are not benefitting from the improved economy. Service to seniors also has suffered recently as some major charities have prioritized their efforts away from senior programs toward children. In general, charitable gifts are considered easier to obtain for children’s services than for seniors.

Volunteers are essential to the delivery of service in the Ombudsman and Nutrition Programs, yet there is virtually no funding available in the OOA budget to partner in the recruitment of these volunteers. Without enough volunteers there is an unavoidable reduction in service. There are waiting lists in some Home Delivered Meals programs. Ombudsman complaint resolution drops. Similarly, in the area of outreach, there is no specific funding available to partner in the production of a countywide directory of services, which is published by a non-profit agency. Only a fraction, 71,000 of the 500,000, or 14%, of seniors have received this resource guide.

A public- private partnership, in which Orange County demonstrates its commitment to its senior citizens with substantial budgetary support, is necessary. The non-profit organizations leverage each dollar put forth by the County through the use of volunteers to carry out the programs. This multiplier effect cannot be undervalued.

Orange County needs a comprehensive and visionary approach to bridge the increasing gap between the senior population growth and the declining services. Since the stated mission of the Office on Aging as an Area Agency is to provide that leadership, it must be given the resources it needs to accomplish that mission.

FINDINGS

In accordance with California Penal Code Section 933 and Section 933.05, the 2015-2016 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings represented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled “Gray Matters, A look at the Office on Aging,” the 2015-2016 Orange County Grand Jury makes has arrived at ten principal findings, as follows:

Orange County General Funds

F.1. Funding from the Orange County General Fund in support of the Office on Aging has not kept pace with the rapid increase in senior population. Allocation to Office on Aging from the

OC General Fund in 2005-2006, prior to the recession, was \$2.20 per senior per year. Over the past five years the allocation dropped to only \$1.32 per senior person per year in FY 2015-16.

F.2. Lack of resources for the Office on Aging hampers its ability to accomplish its mission and mandates as required by the California Code of Regulations-WIC 9400-9404. The Office on Aging is required to be the County's lead planner and advocate for seniors, working with public and private partners to create an updated, coordinated countywide strategic plan to better leverage and integrate all available resources to address the rapidly growing senior population.

Organizational Issues at the Office on Aging

F.3. The position of the Division Manager for the Office on Aging is only a part time position, shared with the Veteran's Service Office. Increasing outreach and Call Center demand require full time management at this level.

F.4. Limited funding to support staff positions results in chronic vacancies within the Office on Aging, negatively affecting service and responsiveness.

F.5. Limited staffing resources prevent the pursuit of grants to support senior services.

Information and Assistance

F.6. The Office on Aging website is outdated and needs technological modernization immediately. There is no provision for access by mobile device or on-line chat capability.

Senior Nutrition and Ombudsman Programs

F.7. The County of Orange provides no on-going budgetary support beyond the original contract to non-profit subcontractors for the recruitment of volunteers.

F.8. Orange County provides no budgetary support to the non-profit agency that publishes the "Answers" publication beyond the cost of individual county department advertising.

Senior Non-Emergency Transportation Program

F.9. Annual and semi-annual mechanical vehicle inspection is the responsibility of the Office on Aging, but no licensed mechanic is on staff to do this.

F.10. Mileage verification of each Senior Non-Emergency Medical trip is the responsibility of the Office on Aging, an inefficient, labor intensive effort requiring manual input of subcontractor supplied data.

RECOMMENDATIONS

In accordance with California Penal Code Section 933 and Section 933.05, the 2015-2016 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 “Gray Matters, A look at the Office on Aging,” the 2015-2016 Orange County Grand Jury makes the following twelve recommendations:

R.1. Board of Supervisors should restore funding to the Office on Aging from Orange County General Funds or any other available and reliable, permanent source of at least \$1,294,000 in FY 2016-2017, based upon the pre-recession amount of \$2.20 per senior per year, to restore staffing levels, update the Call Center and reposition the Office on Aging as the county’s lead planner and advocate. (F1, F2)

R.2. The Office on Aging should apply any increased funds received above the current baseline to restore service levels and to provide strategic leadership countywide. (F1, F2)

R.3. Add a position to serve as event coordinator at the Administrative Manager level 1 to Office on Aging to support OOA outreach and visibility by July 1, 2017. (F2)

R.4. Increase Full Time Equivalent Division Manager of the Office of Aging from FTE 0.5 to FTE1.0 and separate the Veterans Service and the Office on Aging by January 1, 2017. (F3)

R.5. Initiate a recruitment to fill one vacant longstanding Senior Citizen Representative position in the Information and Assistance Call Center by January 1, 2017 (F4)

R.6. Add a position to serve as grant writer at the Administrator II level by July 1, 2017. (F5)

R.7. Update and upgrade the Office on Aging website to provide for mobile device access and an on-line chat function by December 31, 2017. (F6)

R.8. Enter into a negotiation for a cost share with non-profit subcontractors in volunteer recruitment activity by December 31, 2016. (F7)

R.9. Enter into negotiations to cost share with the applicable non-profit agency to produce the book “Answers” by December 31, 2016. (F8)

R.10. Institute an annual Board of Supervisors Volunteer of the Year Award for senior services rendered in the form of recognition and an award funded by the County by December 31, 2016. (F7)

R.11. Add a requirement in the next Request for Proposal for the Senior Non-Emergency Transportation Program to require the subcontractor to handle the physical and mechanical inspection of vehicles at subcontractor’s cost with documentation required by the Office on Aging that the inspection was conducted at the County’s Public Works/Fleet Services Division. (F9)

R.12. Add a requirement in the next Request for Proposal for the Senior Non-Emergency Transportation Program that the sub-contractor produce mileage verification data obtained through MapQuest or similar software and require contractors to submit mileage verifications with payment request. (F10)

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 the 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), detail, 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 or requested from:

Responses Required:

Responses are required from the following governing bodies within 90 days of the date of the publication of this report:

Orange County Board of Supervisors (Findings 1-10, Recommendations 1-12)

Responses Requested:

Responses are requested from the following non-elected agency or department heads:

Gray Matters - A Look at The Orange County Office on Aging

Director, Orange County Community Resources (Findings 1-10, Recommendations 1-12)

WORKS CONSULTED

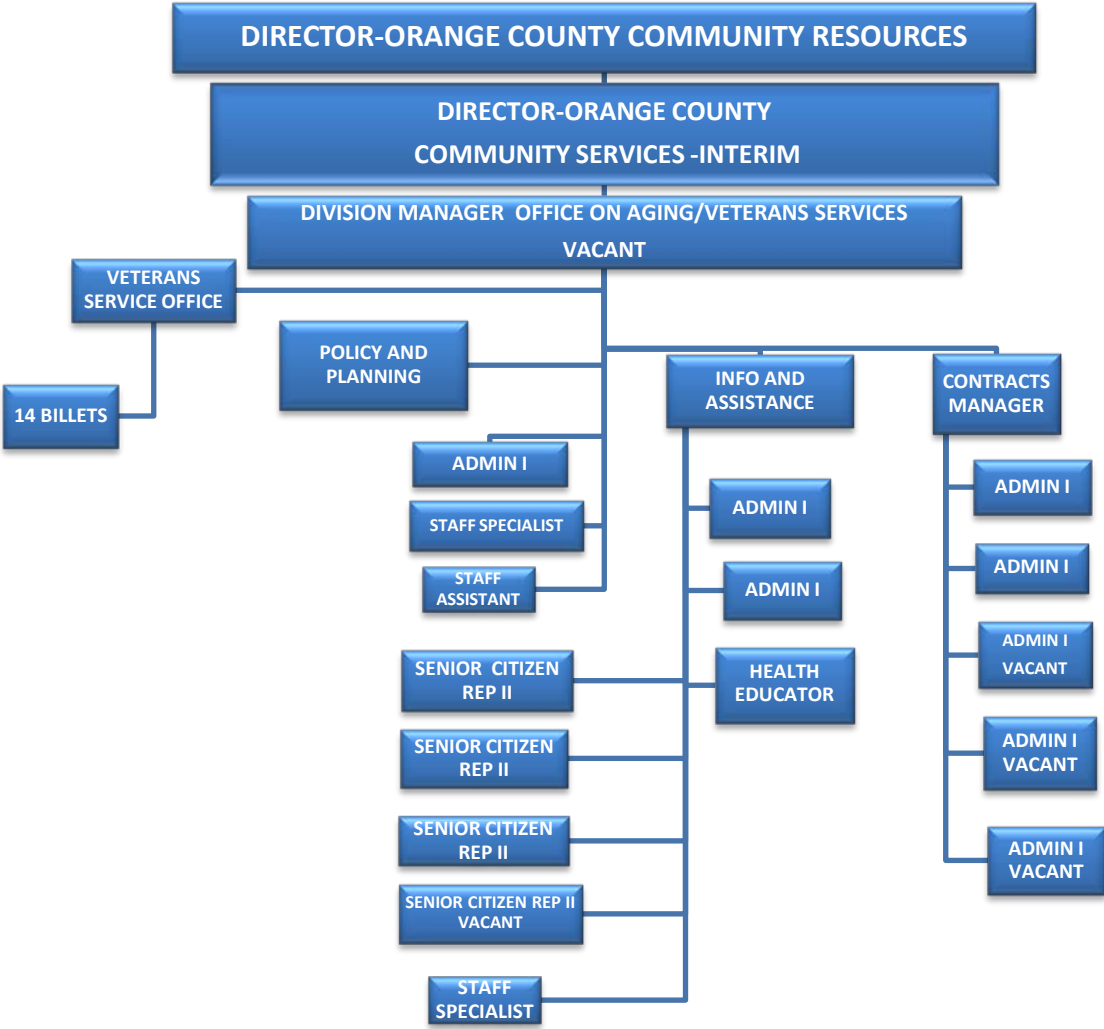
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Appendix 1- Office on Aging Organization Chart



**TO BE CONTINUED...
FOLLOW-UP FOR OPEN FORMAL
GRAND JURY REPORT RESPONSES**



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EXECUTIVE SUMMARY

When a California Grand Jury issues its reports each year, the affected agencies and departments referenced in those reports are required by law to respond to the report's findings and recommendations within a specified time (60 or 90 days). In practical terms, this means the sitting Grand Jury (GJ) must record, track, and evaluate the responses to the findings and recommendations of the prior year's Grand Jury reports. This process is generally referred to as "Report Continuity" or "Report Tracking." This is an important function when one considers that Grand Jury recommendations are thoughtfully formulated after serious, in-depth investigations requiring several months of study, and that commitments are made by the respondents to implement changes, or at least to do further analysis of the issues raised.

The 2015-2016 Orange County Grand Jury focused on recent years when tracking by County administration of the required responses to Grand Jury report recommendations fell short of the established practice of earlier years. The County Board of Supervisors (BOS) and the County agencies and departments they govern (referred to here as the Target Audience), left a number of responses open for fiscal years 2011-2012, 2012-2013 and 2013-2014 (referred to here as the Focus Period). This report looks at whether the commitments made by the Target Audience respondents were actually fulfilled and if open responses were ever resolved.

While each sitting Grand Jury has a central role to play in ensuring report continuity for the preceding term's reports, there is nevertheless often great difficulty in tracking the final outcome of non-rejected recommendations that could not reach closure within the statutory 60 or 90 day response period (aka open recommendations). The Grand Jury also determined that effective tracking by County administration of open recommendations has not been consistent over the years, despite a 1994 directive from the BOS that the County Administrative Office (CAO)/County Executive Office (CEO) track and provide an annual update six months after the initial response submission date. This commitment apparently got lost in the organizational and leadership changes that occurred in the CEO's office in recent years. The Grand Jury investigation concluded that this review process needs to be reinstated and formally integrated into the best practices and procedures of the BOS and CEO and that this review should include all currently open report responses originating from the BOS and the Target Audience.

BACKGROUND

One of the charges of a duly constituted California Civil Grand Jury is to investigate the functioning of county government. These investigations result in published reports that contain findings and recommendations. In Orange County, the County Executive Office (CEO) has the responsibility to coordinate and provide guidance on responding to all entities in the Target Audience (see Appendix D) in preparation for the formal Board of Supervisors' response to the

sitting Grand Jury. This guidance extends from what types of responses are acceptable under the California Penal Code (CPC), to the deadlines associated with the responses. The GJ's review of many years' report responses shows that the CEO has handled the initial coordination of the Target Audience response process well.

The Grand Jury report process is shown in Figure 1 below.

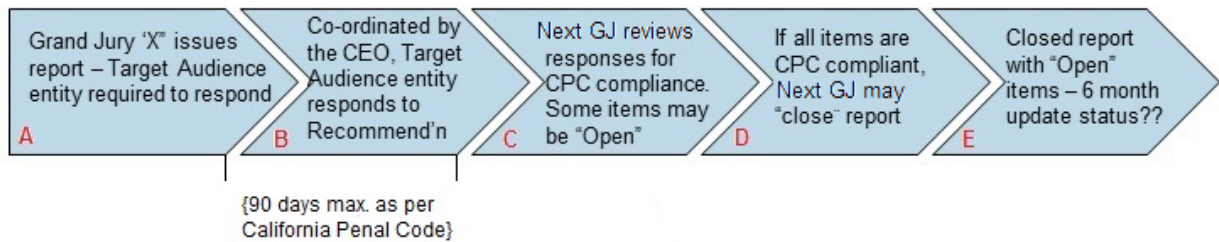


Figure 1: Grand Jury Report response process-flow

Under CPC sections §933.05 and §933, the responding entities must reply to the Grand Jury report within a statutory time period (either 60 or 90 days depending on the responding entity), and with recommendation responses limited to the following approved categories:

1. Implemented – The recommendation has been implemented, with a summary regarding the implemented action.
2. Will be Implemented - The recommendation has not been implemented, but will be implemented in the future, with a timeframe for implementation. (This report uses the acronym WBI to refer to this class of response).
3. Further Analysis – The recommendation requires further analysis, with an explanation of the scope and parameters of that analysis and timeframe. This timeframe shall not exceed six months from the date of publication of the Grand Jury report. (This report uses the acronym FA to refer to this class of response).
4. Will not be Implemented - The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation.

As defined in this report, an open response is one that falls into either the Will be Implemented (WBI) or Further Analysis (FA) category, but in which a final resolution has never been reached or communicated.

Figure 1 depicts the progression of Grand Jury reports from publication through formal closure. The maximum duration of this process for reports directed at the Target Audience is 90 days, but if open responses are submitted, can extend to 180 days or more. This long time frame often results in a loss of continuity of personnel involved in the process; thus complicating effective follow-up and closure of GJ report recommendations.

This Grand Jury believes when a respondent replies to a report recommendation with a “Will be Implemented” or a “Needs Further Analysis,” it is considered still open and in need of resolution or closure. It is a commitment for further consideration or action to which the respondent should be held. Currently there is no effective process in place within the County administration and Target Audience to track these commitments, resulting in diminished impact of the Grand Jury’s reports and its ability to effect positive change in Orange County. Indeed, the 2003-2004 Grand Jury published a report which states that public scrutiny “can improve the impact” of GJ reports (Declaration: More, 201); but such scrutiny is only meaningful if report recommendations reach a conclusion.

Over the years, the report continuity issue has been addressed in Orange County in different ways (see Appendix C). In the 1960s and 1970s, the practice of using outside auditors to help write and follow-up on report recommendations was common (Report on Follow Up, 181). Once this practice was abandoned, subsequent Grand Juries looked at different alternatives to provide report continuity. The 1990-1991 and 1992-1993 Grand Juries published reports recommending that the BOS adopt an ordinance allowing the Grand Jurors Association of Orange County (GJAOC) to assume the task of tracking open report recommendations (Grand Jury Implementation, AD-123; Implementation and Tracking, A-1). Grand Jurors Associations are non-profit, private groups made up of former Grand Jurors with a mission to promote and support the Grand Jury system. A successful Grand Juror’s Association engagement had been achieved in San Diego County since at least 1983. Other previous GJs and the County Administrative Office (CAO) suggested that the duty fall to the CAO or its successor, the County Executive Office (CEO) (Continuity: The Never, SI-9).

The BOS has supported different approaches at different times depending on the zeitgeist. Leading up to the county’s 1994 bankruptcy, fiscal concerns led the BOS to reject accepting any additional responsibilities that would require staff resources. The BOS asked the CAO to evaluate using the GJAOC as an alternative to managing Grand Jury report continuity. When the GJAOC was unable to deliver its GJ continuity report for the 1998-1999 term, the CEO reclaimed the task. CEO ownership of the process was in place and further endorsed with additional Grand Jury report recommendations (Tracking the Implementation, 198) for several years. Indeed, report continuity benefited between 2005 and 2011, roughly the span of one CEO administration. After the then current administration ended, the formal follow-up process seemed to lose its priority or the process was lost with the changes in leadership and, as a result, report recommendations from GJ terms 2011-2012, 2012-2013 and 2013-2014 were not properly tracked to closure.

Scope

Grand Jury continuity is a broad concept that encompasses the total set of responsibilities and tasks that must transfer between Grand Jury terms. Much has been written on the topic, notably a Grand Jury report from 1997-1998 entitled “Declaration: Improvement of Continuity In Grand Jury Activities” (Orange County Grand Jury Final Report, 217) that viewed the entire spectrum of issues from hand-off of promising study proposals, to ongoing complaint investigations, to report recommendations.

The current investigation examines the role of County administration with respect to report continuity, which entails tracking, and resolution of those recommendations still “open.” For this report, the Grand Jury examined responses by the Orange County Board of Supervisors (BOS) and the entities they govern, the Target Audience, for reports issued for the fiscal years 2011-2012, 2012-2013 and 2013-2014, the Focus Period. The GJ cannot find any County records indicating follow-up for open report recommendations from this period. For thoroughness, the investigation expanded its view to open items generated by non-Target Audience entities, to understand the unique challenges involved in tracking recommendations for this subset of respondents.

Prior Investigations

Providing continuity for Grand Jury reports has been a constant challenge for California Grand Juries (CGJ). A report entitled “The Effectiveness of Grand Juries” (Peat Marwick, 1982) stated that GJs as early as 1924 have been suggesting a change in either the make-up or term of Grand Jury panels to better support continuity and follow-up. Other California counties have also published reports that indicate that report continuity is problematic across CGJs. Since the early 1990s, at least six reports have addressed report continuity and the need for a permanent, reliable process to ensure proper follow-up by County administration of Grand Jury recommendations. Despite these repeated calls for improvements, no system for follow-up has survived functionally intact over the years.

Reason for the Current Focus of This Investigation

Despite earlier reports finding difficulty in tracking open report recommendations, and numerous suggested solutions, consistent and thorough response tracking by subject agencies has proven elusive. Lack of effective follow-up diminishes the impact of the civil function of the Grand Jury and also does a disservice to the community when thoughtful report recommendations go unheeded or unresolved due to a lack of systematic follow-up. The Grand Jury decided to first focus on open recommendations coming from the Target Audience in which the original solicitation of report responses has been managed by the CEO (box B in Figure 1). The Focus

Period was chosen since the Grand Jury could not find evidence of County Administration follow-up for these years.

METHODOLOGY

The investigation sought to understand the history behind how GJ report continuity has been addressed as well as how much of an issue it is. Historical research on the topic led the Grand Jury into its archives. The GJ looked at final reports going back to 1931 to determine when report continuity arose as an issue. The GJ tracked reports on the topic of report continuity against a time-line of historical events to gain an insight into priorities and potential limitations (e.g. financial or technical) prevalent at different times. The open recommendations from reports directed towards the Target Audience for the Focus Period were analyzed to understand the scope of the open report recommendations problem.

Documents Reviewed

Documents reviewed included the Orange County Grand Jury final reports for 1975-1976, 1990-1991, 1991-1992, 1997-1998, 2002-2003, 2011-2012, 2012-2013, and 2013-2014, as well as Grand Jury reports on the topic of report continuity from various other California counties. The Grand Jury also reviewed minutes from BOS meetings and the Memoranda of Understanding (MOU) between various BOSs and external parties such as the GJAOC.

Interviews

The Grand Jury conducted in-person and telephone interviews with:

- The Orange County County Executive Office (CEO) personnel including senior executive personnel
- A former Orange County County Executive Officer
- The Grand Jurors Association of Orange County
- A recent San Diego Grand Jury Foreperson
- County of San Diego, Chief Administrative Office Personnel

Grand Jury Review

In conjunction with this investigation, the Grand Jury also reviewed and implemented changes to the Grand Jury processes to increase the likelihood of effective follow up and implementation of recommendations.

INVESTIGATION AND ANALYSIS

Initial Response Consolidation Process

The CEO is tasked by the BOS to manage the entire Grand Jury report response process for the BOS and the Target Audience. The County Executive has assigned the task to the Chief Operating Officer (COO) to manage. The most recent process is detailed in a formal CEO policy letter updated in February of 2016 titled: “Grand Jury Report Responses.” In brief, all entities required to provide responses to GJ report findings and recommendations are informed by the COO of the responses required, the acceptable types of responses and the due dates. Since most GJ reports are issued in June at the end of the Grand Jury term, responses from the Target Audience are generally due by the end of September, 90 days being the maximum timeframe allowed by the Penal Code (box B, Figure 1). The COO provides the respondents with a response template and response examples. The respondent is required to research the issue and to draft a response that they first submit to County Counsel for review prior to returning it to the COO. The COO and CEO staff check the responses for completeness and Penal Code compliance and may slightly edit them. Ultimately, the formal response is placed on the BOS agenda for presentation, discussion, and approval by the BOS, before the formal response is submitted to the presiding judge of the Superior Court, with a copy to the sitting Grand Jury. The formal responses are posted on the Court’s Grand Jury website along with the corresponding GJ report at www.ocgrandjury.org. This process allows the public to read the GJ report as well as the formal response to the report's findings and recommendations.

The sitting Grand Jury studies all of the official report responses received during its term, reviewing them for compliance with the CPC sections §933 and §933.05 (box C, Figure 1). If all responses are compliant, the GJ can vote to close out the report in question (box D, Figure 1). It is important to understand that a GJ report can be closed even though specific report responses remain open (i.e., categorized as needing Further Analysis or as Will Be Implemented). Closure is possible because there is no restriction in the penal code to prevent report close out if certain items are unresolved. The Penal Code only requires that an open response (i.e., either FA or WBI) provide details as to either the analysis to be conducted or the route towards eventual implementation.

Investigation

The Grand Jury reviewed the published reports from the 2011-2012, 2012-2013, and 2013-2014 GJ terms. These are denoted as 11/12, 12/13 and 13/14 respectively. Reports for the 2014-2015 GJ term were not included since many report responses had not yet been submitted at the time of this GJ’s investigation.

Once the open recommendations were identified, the GJ researched a variety of sources to determine the outcome of the recommendation. Follow-up documents that were provided by the CEO were also examined. Additionally, the GJ viewed the respondent’s websites to look for evidence that a recommendation’s Further Analysis (FA) or future implementation (WBI) had made progress. Finally, for those open items for which no current status information was found, the Grand Jury sought the CEO's help to reach back to the Target Audience for an update.

The Focus Period netted 13 reports with a total of 27 open recommendations directed to the Target Audience. This represents almost 30% of Grand Jury reports issued during the Focus Period. These open recommendations were passed to the CEO for additional investigation and follow-up (see Appendix E). Table 1 below is a summary of the open report recommendations the GJ passed to the CEO. It shows the number of open recommendations by grand jury year and by type of response:

	Grand Jury Term		
	13/14	12/13	11/12
Will Be Implemented	14	0	2
Further Analysis	5	3	3

Table 1: Open Recommendation Responses from Target Audience

The CEO set about providing the Grand Jury with current updates on the open items in November 2015. From the updates, the GJ concluded that the large number of WBI responses from GJ year 13/14 was no surprise and could largely be explained by the longer time-frames needed to complete complex projects. In particular, the 13/14 GJ report titled “Orange County Information Technology Management: Good Job Overall; Disaster Recovery Must Be Addressed” dealt with complex technology and disaster recovery issues and netted six of the fourteen open WBI responses for that term (“Information Technology”, 1-38; Appendix E). It was furthermore determined that one of the two WBIs from the 11/12 term has indeed been completed (with slight modifications). The second WBI item remaining from the 11/12 term was ultimately deemed unworkable after the responding agency received RFP responses related to the recommendation.

In contrast, the updates provided for the “Further Analysis” (FA) items are less satisfying. There are a fairly constant number of FAs for each of the years in the Focus Period. Most of the recommendations in this category have neither been rejected outright, nor been completed. The Grand Jury has no authority to demand further action, short of initiating another civil investigation thus leaving the recommendations with an open FA unresolved.

Types of Recommendations Left Open

Will Be Implemented (WBI)

The Grand Jury's analysis revealed that report responses categorized as “Will Be Implemented” were less likely to drag on indefinitely and therefore easier to track to closure. The main causes of significant delay for items categorized as WBI were fiscal or implementation complexity. Recommendations aimed at fixing complex problems or calling for expensive solutions run up against the realities of the budgeting or procurement processes. It is therefore not surprising that the time frame for implementing a complex new initiative from start to finish can easily take 12 months or more. Paradoxically, despite these sometimes-long implementation times, report recommendations in the WBI category are easier to follow up. The WBI class of recommendations has often been taken on by the responding organization and its footprints can usually be seen in a trail of Request for Proposals (RFPs), budget requests by the affected agency(ies) and other ancillary evidence. Indeed, the Grand Jury got a sense that many of the report recommendations that resulted in a WBI response often reflected input provided by the affected entity during the investigation process. Therefore, there was a propensity to agree with the recommendation from the start. Following is a representative sample of WBI-responded recommendations from the Focus Period:

- ...each of the five jails should be funded for upgraded video surveillance...
- ...JWA should evaluate and recommend to the BOS, implementation of a separate cell phone waiting area...
- CEO/IT should establish policies and procedures, and recommend the format and timing for user satisfaction surveys of IT services users, including CEO/IT services, ...

When the Grand Jury had trouble determining the outcome of a WBI response item, it typically was due to the long time-period or phased approach required to achieve the goal. One report recommendation stands out; that the Sheriff should upgrade the video surveillance equipment throughout the county's detention facilities. A variant of this recommendation was made in many past GJ reports (Annual Inquiry 9-26, Annual Report 26, Detention Facilities 204). While the BOS' only influence over the Sheriff is budgetary, past GJ reports have usually asked the BOS to respond to gauge their support for the issues addressed. The cited video surveillance recommendations have often received a “Will be Implemented” (WBI) response. The Grand Jury's investigation concluded there are indeed agency budget requests and agency follow-ups that are moving the related projects (somewhat modified) toward completion sometime during the 2019-2020 fiscal year (See Appendix E, Annual Report on Jails and Juvenile Detention Facilities, 13/14).

Needs Further Analysis (FA)

The Grand Jury looked at all the open report recommendations from the Target Audience that resulted in a “Needs Further Analysis” (FA) response during the Focus Period. It appears the FA response to recommendations that are difficult or complex may be the fallback position to postpone making a final decision in a short timeframe or to avoid a commitment to action they do not really want to make. Grand Jury interviews also revealed that agencies might use the FA response when the position of the Board of Supervisors on the issue at hand was unclear or unknown. Regardless of whether the recommendation being considered actually required additional analysis, an FA response is technically compliant with the Penal Code requirements as long as the scope, parameters and duration of conducting the additional analysis are clearly explained.

Because it necessarily delays a conclusive outcome, without follow-up, an FA response can easily become a non-response. Following is a representative sample of FA-responded recommendations from the Focus Period:

- ...establish a commission with x,y,z goals...
- ...direct the Office of Performance Audit to evaluate an entity...
- ... develop a database...
- ...implement a pilot program...

The examples suggest very broad goals that regardless of merit might invite a response of Further Analysis. A review of many open report recommendations such as those listed above, revealed that those that were overly broad, or lacked clear outcomes or timeframes increased the likelihood of an FA response.

Recall too, that the California Penal Code requires that a “Needs further analysis” response must provide a scope, parameters and a time frame for the analysis, and that this time frame “shall not exceed six months from the date of publication of the Grand Jury report.” Too often, FA responses do not meet this requirement and thus should more accurately be answered with a “Will not be implemented” response.

Report Continuity Outsourcing in San Diego County

The Grand Jury's investigation found that the County of San Diego (SD) has successfully outsourced GJ report tracking since 1983. The SD BOS authorized the Past Grand Juror's Association of San Diego-Implementation Review Committee (IRC) to oversee the report continuity process on behalf of the SD BOS and the entities it governs. According to the SD County Administrative Office, this process has proven effective and has ensured GJ report

recommendation closeout with few problems. The Grand Jury noted several best-practices that San Diego County employed to arrive at this result:

- Strong endorsement by the SD CAO
- Ongoing support of the report continuity process by the SD CAO created a culture within the reporting entities to pay attention to open items and track them closely
- Continuous support and selling by the SD CAO within the IRC keeps the report continuity culture vibrant
- Small benefits from the county to IRC members lets them know their volunteer efforts are appreciated.

The success that the IRC has had in carrying out the report follow-up function on behalf of the CAO underscores that a strong endorsement from county leadership can have a positive effect. It also allows former Grand Jurors to further their contribution to civic life in San Diego County.

In contrast with the approach taken in San Diego County, and given the failed Orange County outsourcing experience in the mid-90's, current and past Orange County County Executive Offices appear to have taken the position that open recommendation follow-up is so important that it needs to be overseen by the CEO itself.

Report Continuity History in Orange County

The Grand Jury review of its archives found a pattern relating to the follow-up on GJ reports. Table 2 shows that for a seven-year period starting with the 2005-2006 GJ term (roughly corresponding to the duration of the then current administration), annual follow-up sessions were held with the GJ. Prior to that period, the Grand Jury could find no evidence of follow-up sessions. The same can be said for the period starting with the 2012-2013 GJ term. The pattern of follow-up years versus non-follow-up years leads the GJ to suspect that the report continuity process has been a victim of the sometimes chaotic re-organization that accompanies each new County administration. Grand Jury report follow-up simply fell off the priority list and lacked the presence of a champion.

Grand Jury Term	Follow-up update provided
14/15	TBD
13/14	none
12/13	none
11/12	3/25/2013
10/11	5/22/2012
09/10	3/22/2011
08/09	3/30/2010
07/08	3/24/2009
06/07	3/18/2008
05/06	3/20/2007
04/05	none
03/04	none
02/03	none
01/02	No evidence
00/01	No evidence

Table 2: History of Follow-up

The Grand Jury learned that another factor that contributes to timely and complete report continuity is the seniority of the staff within the COO who are directly dealing with the appointed agency leads tasked with drafting the responses. When senior staff oversee the report response process, the respondents seem to place a higher priority on properly completing the task.

Non-Target Audience Open Items

The Grand Jury was also curious about the effort required to track open report responses beyond the Target Audience (e.g. elected agency heads, cities, school districts). The GJ contacted a subset of such responding entities to ask what became of various open recommendations from the Focus Period.

The GJ discovered that this was a time-consuming effort, complicated by passage of time, change of personnel and contacts, and difficulty identifying individuals who could provide update information. The result was often an exhaustive sequence of messages left, phone calls not returned, inability to locate a knowledgeable party, and so on.

Tracking Target Audience Open Items beyond the Past GJ Year

Similar to difficulties experienced in tracking open report responses outside of the Target Audience, the GJ found it increasingly difficult to track older open responses. This report refers to such open items as long-standing open report responses.

As time passes, memories fade, personnel turnover and agency priorities shift. Re-visiting long-standing open report responses becomes difficult if an agency lacks internal processes to ensure tracking over time. It is the Grand Jury's belief that if respondents know that open responses will be tracked to closure over the long-term, they will adjust and establish proper procedures to ensure that open items will be brought to closure within the committed time frame and that this progress will be reported back to the CEO and ultimately, the Grand Jury.

Costs Associated with Achieving Improved Report Continuity

The CEO, through the county COO, currently manages the initial Grand Jury report response process for the BOS and its Target Audience. They have proven to be quite efficient in coordinating all of the activities required to produce initial responses and in meeting the deadlines established in the Penal Code. If the additional task of coordinating an annual open response update were placed on the CEO, it is estimated that a minimal additional burden on their staff would occur.

Since the CEO was originally involved in collecting the initial response, tracking an open reply through to closure would represent a small additional time commitment on their staff. The CEO estimates that the additional staff time required to track an open recommendation to closure would average one hour per item. The responding agency or entity would also experience a small additional workload in tracking and updating the CEO. If this response requirement were understood up front, each responding entity could be expected to carry out the additional reporting task with minimal additional time burden.

The effort to track and resolve long-standing open report responses will definitely be greater than for recent open items. Despite the greater difficulty and additional staff time required to track items over longer time frames, the GJ feels that the increase in time and effort is worthwhile and warranted.

FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2015-2016 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 “To Be Continued... Follow-Up For Open Formal Grand Jury Report Responses,” the 2015-2016 Orange County Grand Jury has arrived at eight principal findings, as follows:

- F.1.** The beneficial impact of Grand Jury reports is diminished if recommendations are left open and not properly pursued to closure.
- F.2.** The credibility and impact of the Grand Jury watchdog function is diminished if recommendations are left open, without a process within County Administration for follow-up and for holding responding departments to their commitments.
- F.3.** Tracking and consolidation of open report recommendations directed to the Target Audience should be the responsibility of the CEO.
- F.4.** The process of tracking open Grand Jury report recommendations is most effective when formalized and instituted as an ongoing procedure by the CEO.
- F.5.** The follow-up of open report recommendations is best done in March of each year to coincide with the requirement that responses of Further Analysis (FA) must have been completed within 180 days from the original response date.
- F.6.** The Target Audience needs written policies and procedures from the CEO for proper use of the “Needs Further Analysis” (FA) response to ensure it complies with CPC section 933.05, including the scope, and parameters of that analysis and timeframe not to exceed six months.
- F.7.** Tracking open Grand Jury recommendations to closure becomes a higher priority for the Target Audience when promoted and endorsed by the Board of Supervisors and the CEO/COO.
- F.8.** The CEO is in the best position to track and consolidate long-standing open report recommendations directed to the Target Audience.

RECOMMENDATIONS

In accordance with California Penal Code Sections 933 and 933.05, the 2015-2016 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 “To Be Continued... Follow-Up For Open Formal Grand Jury Report Responses,” the 2015-2016 Orange County Grand Jury makes the following five recommendations:

- R.1.** The BOS should reaffirm their R1 response to the 2002-2003 Grand Jury report “Tracking the Implementation of Grand Jury Recommendations” in which the CEO assumes “the responsibility of following up on prior year open implementation items and provide a written status to the sitting Grand Jury no later than March of each year.” (F3, F4, F7, F8)
- R.2.** The CEO should institutionalize the follow-up procedures mentioned in R1 into its formal practices such that turnover of personnel will not negatively impact the follow-up process. This should be completed before the March 2017 follow-up meeting with the Grand Jury. (F1, F2, F3, F4)
- R.3.** The CEO should make clear to the Target Audience that open Grand Jury report recommendations will require follow-up. This should be completed before the March 2017 follow-up meeting with the Grand Jury. (F5, F7)
- R.4.** The CEO should advise the BOS and Target Audience that all open Grand Jury report responses of the type FA (i.e., needs further analysis) which still have not progressed by the March follow-up meeting will be changed, as appropriate, by the TA, to either Penal Code §933.05(b), (1) Implemented, (2) Will be Implemented or (4) Will not be implemented and reported as such to the Grand Jury during the March follow-up meeting. (F6)
- R.5.** The CEO should take on the responsibility of tracking updates on long-standing open Grand Jury report responses from the Target Audience, and provide the Grand Jury with a current status during each annual March follow-up meeting. (F8)

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 County 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) detail, 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 or requested from:

Responses Required:

Responses are required from the following governing bodies within 90 days of the date of the publication of this report:

Orange County Board Of Supervisors:

90 Day Required Responses:	F1	F2	F3	F4	F5	F6	F7	F8
Orange County Board of Supervisors	X	X	X	X	X	X	X	X

90 Day Required Responses:	R1	R2	R3	R4	R5
Orange County Board of Supervisors	X	X	X	X	X

Responses Requested:

Responses are requested from the following non-elected agency or department heads:

Orange County County Executive Office:

Requested Responses:	F1	F2	F3	F4	F5	F6	F7	F8
County Executive Office	X	X	X	X	X	X	X	X

Requested Responses:	R1	R2	R3	R4	R5
County Executive Office		X	X	X	X

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Agenda Item Transmittal, March 29, 1994.
- California Penal Code: 2002 Desktop Edition, West Group, §993 and §993.05.
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APPENDICES

Appendix A: Acronyms

1. Board of Supervisors – BOS
2. Chief Administrative Office -CAO
3. California Grand Jury – CGJ
4. Chief Operating Officer - COO
5. California Penal Code - CPC
6. County Executive Office – CEO
7. Further analysis – FA
8. Grand Jury - GJ
9. Grand Juror’s Association of Orange County –GJAOC
10. San Diego-Implementation Review Committee - IRC
11. Orange County Grand Jury – OCGJ
12. Request For Proposal - RFP
13. Will be implemented - WBI

Appendix B: Glossary

1. County Counsel – The legal advisor to the BOS, CEO, GJ and other county agencies.
2. Finding – A conclusion that a Grand Jury investigation arrives at after careful weighing of all evidence before it. A Finding is different from a Fact, in that a Finding includes a subjective conclusion based on a set of Facts analyzed.
3. Focus Period - fiscal years 2011-2012, 2012-2013 and 2013-2014
4. Independent Entity – An entity under the purview of the Grand Jury outside of the Target Audience (e.g., an elected agency head, a city council, school board)
5. Long-standing open report response – An open report response that originated with a Grand Jury report earlier than the prior year (e.g. if the current term is 2015-2016, any open report response from a report issued by the 2013-2014 or earlier would be considered a Long-standing open report response.
6. Open Recommendation – A report recommendation for which the response category was either “Further Analysis”, or “Will be Implemented” and which has not been updated since the original response.
7. Panel – A reference to the sitting Grand Jury
8. Recommendation – A proposed implementation of, change or update to an established process of an entity based on findings and which are relevant to the agency in question, specific, and can realistically be implemented.
9. Request for Proposal – An entity requiring a custom solution will issue a request for proposal to interested parties (aka vendors). The RFP will detail all of the entity’s requirements. The vendor’s response will detail the vendor’s ability to meet the entity’s requirements, a timeline and cost indicators. The RFP process often takes six or more months to collect and understand the entity’s requirements, write the RFP, allow the vendors to consider and respond, and ultimately for the entity to digest and rank the responses.
10. Target Audience – Those departments and agencies with appointed department heads, who respond to the Grand Jury through their governing body, the Board of Supervisors, (via the CEO).

Appendix C: History of Report Continuity Recommendations in Orange County

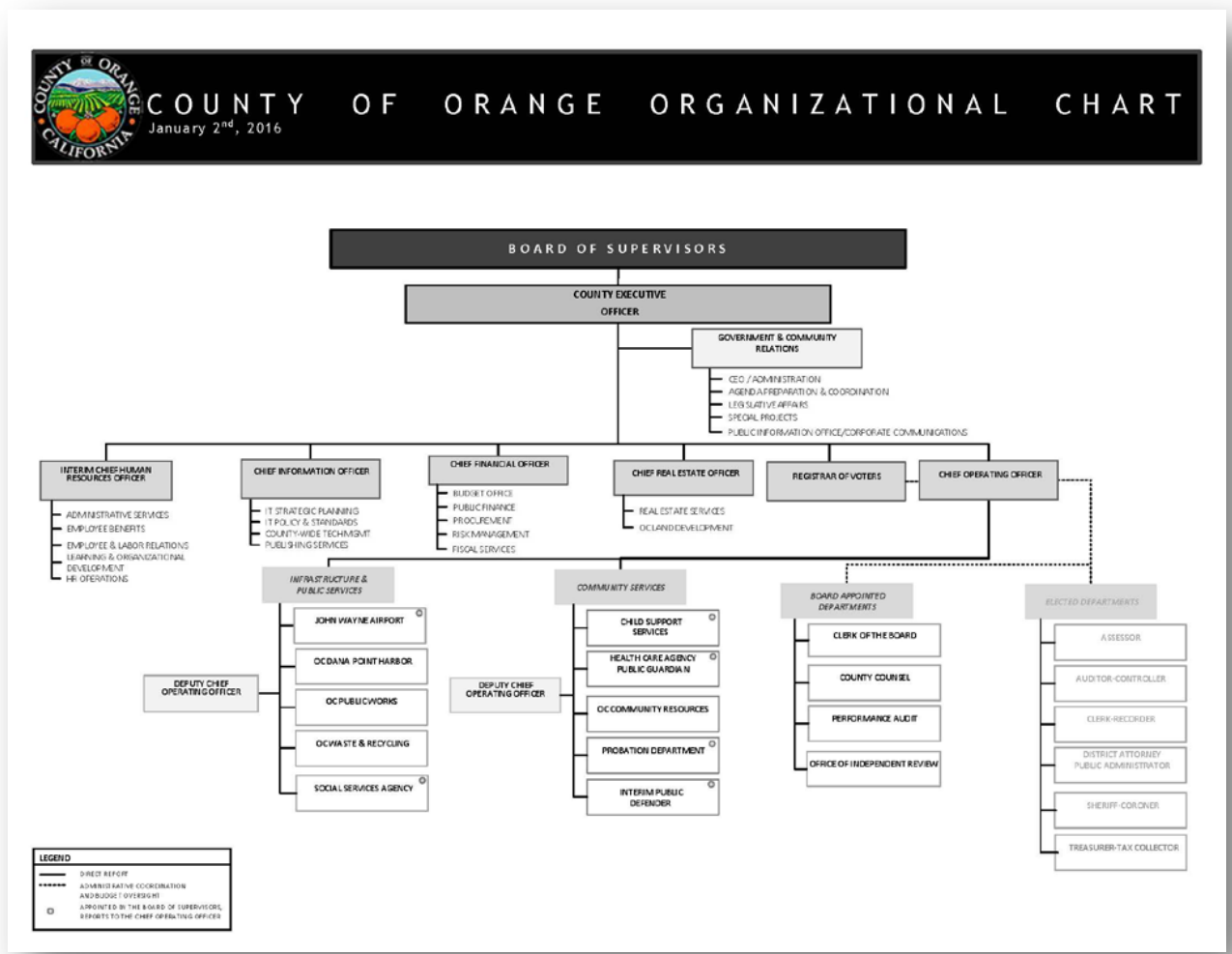
GJ Term	Respondent	Originating Document	Recommendation	Response
1945/1946	BoS	Preamble to Final Report	Note: Issued preliminary reports on 7 & 21 February 1946. Final report preamble followed-up on recommendations made in the preliminary report. The GJ listed a status of all items mentioned in the preliminary and urged continued focus. * Repair and renovation of the Courthouse buildings. (7Feb46) *County pound (rabies, stray dogs) (21Feb46)	
1975/1976	Report; no rec's	Report on Follow Up of Prior Contract Auditors' Recommendations for the 1975-76 OCGJ (Pgs 181-194)		Note: In earlier years OCGJs often used auditors to examine topics and to make recommendations. This 7576 report documents a follow-up audit by Author Young & Co., checking on the current implementation status of earlier auditor-recommendations.
1976/1977	Report; no rec's	Report on Follow Up of Prior Contract Auditors' Recommendations from 1973, 1974, and 1975/76.		Price Waterhouse & Co. conducted this follow-up analysis.
1987/1988		Orange County Grand Jury Final Reports Follow-up 1982-87		The goal was to analyze the actual status of recommendations made during the 5 previous GJ terms. A sweeping 'meta-report' of this nature gives the citizens of OC the ability to determine whether commitments made have actually been fulfilled to the intentions of the recommenders.
1990/1991	BoS	Grand Jury Implementation Procedure Study	R1. Adopt an Ordinance establishing a follow up committee similar to the "Past Grand Jurors Association Implementation Review Committee," as adopted by San Diego County.	Do not concur. Establishing an additional County organizational unit is not recommended in light of continuing County fiscal constraints.
1992/1993	BoS		R1. The BoS should adopt an ordinance or resolution which establishes a committee to follow up on the implementation of concurred recommendations. This committee should be conceptually like the former "Grand Jurors Association of Orange County Response Review Committee".	We believe that existing policies for follow-up on recommendations with which the Board has concurred assure that they are being implemented in appropriate and realistic time frames. However, the concept of establishing an Implementation and Tracking Committee is worthy of consideration if it would facilitate greater continuity between Grand Juries. The recommendation suggests a voluntary, no cost approach for this follow up committee. The County Administrative Office will return to the Board within 60 days with a feasibility study that identifies the benefits and cost implications of establishing such a committee.
3/29/1994	CAO	AIT to: BoS O.C.	Summary of request: CAO submits report on the feasibility of establishing a Grand Jury Implementation and Tracking Committee.	The BoS approved the recommendation that the CAO conduct a once a year follow-up with the sitting Grand Jury to discuss the implementation status of the prior year's recommendations with which the Board has concurred
				(Note: The CAO studied & rejected using the GJAOI-I&T, instead suggesting an annual meeting between CAO & sitting GJ to review the status of the prior years' recommendations)
Orange County Bankruptcy - 1994/1995 GJ serves 18 months (1July94 thru 31Dec95); the 1996-1997 GJ serves 18 months (1Jan96 thru 30June97)				

To Be Continued... Follow-Up For Open Formal Grand Jury Report Responses

7/23/1996	BoS	BoS Minutes	Grand Jurors Association of Orange County - Implementation and Tracking Committee: The CEO requests authority to facilitate the activities of the GJA's Implementation and Tracking Committee to review the implementation of Grand Jury report recommendations.	Motion: On motion by Sup. Stanton, seconded by Sup. Saltarelli, the Board moved to: 1. Authorize the CEO to facilitate the activities of the GJA's Implementation and Tracking Committee 2. Direct that the CEO keep the Board apprised of information and/or documents developed by the GJA's ITC and to coordinate additional follow-up activities as needed resulting from the Committee's review. Sup. Silva was absent. MOTION CARRIED.
1999/2000	BoS	Continuity The Never Ending Report...	The BoS institute a findings and recommendations follow-up program to ensure that, on an ongoing basis, all County elected officers and agency heads comply with Penal Code Sections 933 and 933.05.	The recommendation will not be implemented because it is not warranted. As explained in the response to finding #2, the County currently has a findings and recommendations follow-up program in place. Due to internal difficulties within the Association, it has been unable to provide its report on the FY1998/99 reports as specified in the Board's July 23, 1996 directives and agreed to by the Association. Staff is coordinating with the Association to determine if they are capable of continuing to provide this function for the County. Should this not be possible, the CEO will task staff to continue this function.
			The CEO comply with 4 directives of the BoS as set forth by the BoS in their March 29, 1994, minute order.	The recommendation will not be implemented because it is not warranted. As stated in the response to finding 2, the Board's directives of July 23, 1996 superceded those of its March 29, 1994 directive. Based upon the Association's request to perform this function for the Board, the Board formalized this relationship on July 23, 1996. The County believes utilizing the services of the Association to perform this service is still the best way to accomplish this function. Staff will be working with the Association to determine what resources it can provide the Association to allow them to continue the follow-up process on Grand Jury reports. ...
2002/2003	BoS	Tracking The Implementation of Grand Jury Recommendations	R1. The County Executive Officer review directions given in the Board of Supervisors motion of March 29, 1994, for tracking and reporting of pending or open implementation actions.	The Recommendation has been implemented. The motion carried by the Board on March 29, 1994 had the following four components: 1. Direct the CAO to meet with the Grand Jury each year to discuss open items. 2. Direct the CAO to provide the Grand Jury with a written report summarizing the implementation status of open items. 3. Direct the CAO to provide minutes from this meeting to the Grand Jury. 4. Direct the CAO to provide the Grand Jury with any additional requested information. The CEO will assume the responsibility of following up on prior year open implementation items and provide a written status to the sitting Grand Jury no later than March of each year. A meeting will be scheduled each year with the Grand Jury to review prior year open items. And as always, the CEO is available to support the Grand Jury on any information requests throughout the year.

Appendix D: Target Audience

The list of departments/agencies for which the BOS (via the CEO) has assumed responsibility for collecting and forwarding responses is depicted below. Elected department/agency heads provide separate responses to GJ report recommendations, but the BOS (via the CEO) are required to provide responses to those recommendations touching upon elected department/agency personnel or budgetary matters.



Appendix E: Open Recommendations Analyzed

Open items for years 2011-2012, 2012-2013, and 2013-2014 directed at the Target Audience:

Title of Report	GJ Year	Respd Entity	Rec Num	Status Code	Status Of Recommendation
Status Code: WBI=Will be Implemented, FA=Further Analysis					
ANNUAL REPORT ON JAILS AND JUVENILE DETENTION FACILITIES	1314	BoS	pg11 R1	WBI	Plan has been developed to upgrade video camera/recording equipment over the next 5 fiscal yrs (FY15/16-FY19/20) (check on FY15/16 progress)
			pg25 R3	WBI	should be completed in FY14/15
Maximizing the Benefits of John Wayne Airport to Better Serve Orange County	1314	BoS	R4	WBI	Cell Phone parking lot has indeed been implementedl opened in Sept2015.
DANA POINT HARBOR REVITALIZATION ~ 15 YEARS OF PLANNING: WHAT HAS BEEN LEARNED?	1314	CEO	R1	FA	Report to BoS by 12/31/14
			R5	WBI	Contract Policy Manual will undergo thorough review in 2015 for mods to be approved by BoS
			R8	WBI	Prior to expiration of current East Basin Ops Agrmt in Feb2021, a cost analysis will be done for both basins
Improving The County of Orange Government's Multi-Billion Dollar Contracting Operations	1314	BoS	R1	FA	Contract Policy Manual will undergo thorough review in 2015 for mods to be approved by BoS. See above where same response was a WBI
		CEO	R2	FA	Contract Policy Manual will undergo thorough review in 2015 for mods to be approved by BoS. See above where same response was a WBI
Juvenile Offenders and Recidivism: Orange County Solutions	1314	BoS	R3	WBI	Agree, grant funds & donations to be solicited. Probation Dept to take the lead.
Orange County Information Technology Management: Good Job Overall; Disaster Recovery Must Be Addressed	1314	BoS	R2	WBI	Joint reply with CEO/IT. Will be implemented in FY14/15
			R3		CEO never replied on behalf of BoS on this. Only reply came from Sheriff-Cor.
		CEO/IT	R1	WBI	Will be presented to IT Exec C in FY14/15 for approval
			R2	WBI	in FY14/15
			R4	WBI	in FY14/15
			R5	WBI	in FY14/15
			R6	WBI	in FY14/15
			R8	WBI	Committee underway to determine if it makes sense to centralize County IT Services under the CEO office of InfoTech.
Revisiting Orange County Food Safety: Improving Placard Visibility for the Public's Best Interest	1314	BoS	R1	FA	Originally 90 days from 29Apr15. Continued until Jan15, when presented to BoS, where rec's failed for lack of majority
			R2	FA	Originally 90 days from 29Apr15. Continued until Jan15, when presented to BoS, where rec's failed for lack of majority

LIGHT RAIL: IS ORANGE COUNTY ON THE RIGHT TRACK?



GRAND JURY 2015-2016

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EXECUTIVE SUMMARY

From the end of World War II until 2003 there was little interest in Orange County for any kind of light rail system that could link high density cities with other rail services, or even with each other. The old Pacific Electric (PE) light rail system which had linked Los Angeles with Orange County cities and with Riverside since early 1900 had been replaced by automobiles and buses.

Although Orange County had experienced the same traffic congestion and smog problems as the rest of Southern California, city and county managers expressed little interest in finding options for mass transportation beyond buses or local commuter rail. In contrast, both San Diego and Los Angeles Counties initiated master plans for transportation in the early 1980s and immediately started building second-generation light rail networks. These networks have been largely successful in helping to reduce traffic congestion and smog by reducing the number of automobiles on the roads.

The Centerline Project, conceived in the late 1990s by the then new Orange County Transportation Authority (OCTA) was an initial effort to introduce light rail to Orange County along with upgrades in road and bus capability. However, the twenty-eight mile rail component alone was estimated to cost just over \$1 billion and this, as well as the size of the project kept funding sources and political support at bay.

Now, since 2006, OCTA has been using its authority, funding access, planning, and management capabilities to create a more measured process for development of light rail and other transit extensions that link county Metrolink Rail Transportation Centers with light rail and other transit extensions.

In this report the Grand Jury has examined OCTA's work with respect to the OC Streetcar Project and the Anaheim Rapid Connection (ARC) Project, as well as complimentary efforts by the cities of Santa Ana, Garden Grove, Anaheim and Fullerton. The Grand Jury found that initial successes such as the OC Streetcar Project between Santa Ana and Garden Grove are significant, both for educating the public and for providing future project momentum.

Therefore, the Grand Jury has recommended that OCTA take a number of steps to educate the public through public outreach and marketing/promotion, to establish a draft transportation master plan which includes both intra and inter county light rail network possibilities. Finally, the Grand Jury finds that similar public outreach efforts by the cities that are part of this report are worthwhile and a number of recommendations follow.

The efforts documented show all are truly interested in supporting the public good and the incremental and disciplined approach being used by OCTA to develop light rail systems is placing Orange County on the right track.

BACKGROUND

Light Rail Defined

While the focus of this Grand Jury report is the potential for development and use of light rail systems in Orange County, definition of the more common types of rail systems is important in order to better differentiate light rail. Short definitions are provided below and in some cases a more complete definition can be found in the Glossary.

Light rail systems are electric powered rail-based systems found in urban environments and used to provide passenger transit from transportation centers to working, shopping, and entertainment centers or to their homes. Light rail systems may be called streetcars, cable-cars or heritage streetcars depending on their age and urban location and typically do not exceed three cars in any particular application. An example of this is the OC Streetcar System being developed to connect Santa Ana and Garden Grove (Light Rail in the United States, 1).

Same-grade or fixed guideway rail systems run at street level, sharing the same corridors with automobile traffic. While this normally avoids the expense of bridges and underpasses to separate rail from other traffic, it does require extensive planning and right of way control measures.

Grade-separated rail systems, such as commuter rail or heavy rail, are normally separated from other traffic by dedicated right of way, bridges or underpasses.

Heavy rail systems are defined by the American Public Transportation Association as high speed electric powered railways able to handle heavier passenger loads than light rail systems, but distinct from commuter rail and intercity rail systems. An example of Heavy Rail is the Amtrak System (Passenger, 5).

Commuter rail systems are defined by purpose and may use the same rail corridors as heavy rail. Commuter rail services are designed and scheduled to allow rapid commuter passenger transit from transportation center to transportation center and are generally scheduled to support riders going to and from their jobs or to major sporting events. Examples of commuter rail are the Metrolink system that services Orange, Riverside and Los Angeles Counties and the Coaster system that services San Diego and Oceanside, CA.

Light Rail in Southern California

Use of light rail in Southern California has transitioned through several cycles in the past 115 years.

In the early 1900s, growth of first generation light rail in Southern California paralleled population growth in urban centers. The public wanted convenient and inexpensive mass transit that was able to carry passengers more efficiently than early automobiles or horse and buggy. The first successful light rail venture in Southern California was the Pacific Electric (PE) Railroad Company which began construction of electric rail lines connecting the City of Los Angeles with surrounding cities in 1901.

This PE Red Car system served several districts with a Northern branch reaching into the San Gabriel Valley, a Western branch to Venice, and a Southern branch to Long Beach, Newport Beach, Huntington Beach and Santa Ana. By 1915, PE was the largest operator of interurban electric railway passenger service in the world, with 2,160 daily trains over 1,000 miles of track.

A phase-out of the PE System began in 1930 and continued until after World War II with light rail giving way to the popularity of automobiles as a primary means of transportation. Light rail impeded automobile traffic in urban areas, and the Eisenhower era emphasis on freeway construction soon replaced historic PE light rail routes.

Presently, much of the old PE Right of Way (ROW) has been re-used or “built out.” ROW that does still exist include a 100 foot-wide diagonal corridor half way between Interstate 405 and Interstate 5 and an 11.75 mile section running between the cities of Santa Ana in Orange County and La Palma in Los Angeles County. OCTA has purchased sections between the cities of Stanton and Santa Ana and some of this has been leased to provide maintenance revenue.

During the 1970s, increasing air quality concerns as well as urban population growth and the 1973 oil crisis spurred yet another cycle of light rail development. Los Angeles and San Diego County planners began to give serious consideration to mass transit systems that could support high density, urban areas without further crowding roads and freeways or increasing smog. As a result of this planning, these counties began construction of a number of second-generation light rail systems during the 1980s (Pacific Electric 2-9).

Second-generation light rail is an industry term applied to current efforts to create and use light rail in Southern California as well as the remainder of the United States. These systems began in San Diego in 1981 with the San Diego Trolley, followed by Los Angeles County in 1985 with the Metro System.

Now, according to the American Public Transportation Association, of the 30-odd cities with light rail in the United States, six of them (Boston, Los Angeles, Philadelphia, Portland [Oregon], San Diego, and San Francisco) move more than 30 million passengers each year (Light Rail in the United States, 1).

Los Angeles County's Metro Rail System

During the 1970s, Los Angeles County was ready to begin serious consideration of more environmentally friendly mass transit systems for high density urban areas without adding to crowded roads and freeways.

The Los Angeles public approved use of sales tax proceeds, as well as other funding, to support creation of additional rail transit capability. In 1985 the Los Angeles County Metropolitan Transportation Authority began construction of a Metro Rail System combining light rail and heavy rail systems. In many cases these light rail ROWs followed the old PE Red Car ROW.

Since 1985, Los Angeles County has expanded the light rail portion of its Metro Rail System to approximately 79 miles. For example, as of January 2014 the Blue Line travels from the Los Angeles financial district to downtown Long Beach, and the Gold Line links East Los Angeles to Pasadena. As noted in a July 14, 2015 article from the *Los Angeles Times*, "...the Blue Line, which turns 25 this week, eclipsed ridership benchmarks to become one of the most heavily traveled light-rail lines in the United States."

In addition, in 2003 the Metropolitan Transportation Authority authorized an independent agency, the Exposition Metro Line Construction Authority (EMLCA), to plan, design and construct a light rail line called the Expo Line to run from downtown Los Angeles to Culver City and then eventually to Santa Monica. The Expo Line is still under construction. When it is completed, the EMLCA will transfer Expo Line operation and management to the Los Angeles County Metropolitan Transportation Authority (Expo Line, 1).

South San Diego County and the San Diego Trolley

While the City of San Diego had enjoyed electric rail service as early as 1891, changes in mass transit mirrored those occurring in Los Angeles County. By 1949, the city of San Diego replaced its streetcar system with buses. Then in 1966, with San Diego Transit losing money, a San Diego Comprehensive Planning Organization (CPO) began to search for more economic options to meet longer term transit needs. Although the CPO had realized that some options might not be as cost effective or flexible as buses, it decided to study solutions that included a same-grade light rail system. Subsequently, the San Diego Metropolitan Transit Development Board (MTDB) determined that a same-grade system could best satisfy the following requirements:

- Any proposed corridor extend a long distance and offer high-speed operation;
- Low capital cost designs be adopted to keep costs affordable;
- Construction should be at-grade with mostly exclusive right-of-way; and
- Operating deficits should be minimized.

With funding due to expire by 1981, the MTDB moved to purchase the partially damaged San Diego and Arizona Eastern Railway (SD&AE) ROW that included freight capability east into the Imperial Valley as well as sufficient ROW to support an initial 13.5 miles of light rail. This light rail system is the oldest of the second generation light rail systems in the United States (San Diego Trolley 1).

In the past 25 years the San Diego Trolley has grown to include three main lines offering regular service from 5:00 AM to midnight seven days a week. The system now extends to 53.5 miles with 53 stations. Between 2:00 AM and 3:30 AM each day the trolley right of way is used by the San Diego and Imperial Valley Railway only to move freight (San Diego Metropolitan, 1-7).

The greater San Diego Metropolitan trolley system now links the downtown Santa Fe Depot with the San Diego Convention Center, Petco Park, the Mexican border, Qualcomm Stadium, major San Diego universities and Old Town San Diego, as well as other cultural and population centers within San Diego County. The Santa Fe Depot is also the southern terminal for Amtrak and Coaster train service. The average daily trolley ridership in 2014 was 119,800 passengers and the annual ridership number approximated 39.7 million passengers. An extension of 156 new miles is being proposed in the 2050 Regional Transportation Plan (San Diego Trolley, 7).

Members of the Grand Jury visited San Diego, rode the San Diego Trolley, and observed the pride exhibited by the San Diego public in their light rail system.

North San Diego County and the Sprinter Light Rail System

The Sprinter light rail system is an East/West oriented diesel powered system in north San Diego County linking the Oceanside Transportation Center to the Escondido Transportation Center. Owned and operated by the North County Transit District (NCTD), Sprinter runs for 22 miles and has 15 stations that include Palomar College and California State College, San Marcos. Daily ridership in 2013 was 8,500. Funding justification for Sprinter was partially based on the goal of reducing traffic congestion on California State Road 76 which also runs from Oceanside to Escondido. The transit extension service provided by Sprinter to Oceanside links passenger service with the Coaster, the Metrolink Orange County Line, the Metrolink Inland Empire-Orange County Line and the Amtrak Pacific Surf liner regional line (Sprinter, 1-6).

Prior Grand Jury Reports on Light Rail Development in Orange County

No Grand Jury has reported on development of light rail systems in Orange County. The 2009-2010 Orange County Grand Jury did, however, investigate the City of Santa Ana's decision making process when it chose Cordoba Corporation as the lead consultant for a technical analysis of Santa Ana's portion of OCTA's "Go Local" Phase II project, a precursor to the OC Streetcar Project (Santa Ana Streetcar, 1- 10).

“Go Local” was an OCTA initiative seeking to work with all 34 Orange County cities to find ways to increase Metrolink ridership by creating better connections between Metrolink Transportation Centers, these cities and employment centers. The City of Santa Ana was active in this pursuit and issued a Request for Proposal (RFP) for a feasibility study. During this process Cordoba was rated as least qualified among all applicants yet still won the contract to receive 75% of the initial \$4.85 million allocated by OCTA.

That 2009-2010 Grand Jury report suggested possible violations of Assembly Bill 1234, defining ethics law principles and conflicts of interest for public servants, and the Brown Act, which was enacted to facilitate public participation in local government decisions.

Scope and Focus of This Report

This report provides a brief history of the growth and decline of light rail in Southern California during the 20th Century. It also recaps some of the economic, smog and policy concerns that supported development of second generation light rail systems in both Los Angeles and San Diego Counties. It provides a baseline and comparison for investigation and analysis of second generation light rail development, or lack thereof, in Orange County.

The Grand Jury then examines and analyzes efforts by OCTA and the cities of Santa Ana, Garden Grove, Anaheim and Fullerton to advance, or consider advancing light rail as a preferred transit option. These are Orange County cities with Metrolink Stations, or transit links with Metrolink Stations, that have become actively engaged with OCTA’s goal to expand Metrolink ridership. Each city, through OCTA’s leadership, has the opportunity to use Orange County Tax Measure M2-Project S funding as well as the U.S. Department of Transportation’s New Starts grant money and other federal, state and local funds to establish light rail systems they believe will effectively increase ridership and provide economic development.

The Grand Jury chose to focus on these four Orange County cities based on current project activity, as well as OCTA recommendations. Each city represents a different set of public policy and economic circumstances which make light rail system development important for them to consider. As such, each city is on a pathway to obtain public and OCTA support, complete initial feasibility and environmental impact studies, and receive Department of Transportation and California State funding.

Appendix B compares light rail development status of each of these cities using a number of metrics that not only show the complexity of each project, but also provide a sense of funding, policy decisions and long timelines required from start to finish. As provided in the Appendix, this data also provides a continuum of Orange County cities ranging from well into a light rail project, to one still working to meet New Starts and OCTA criteria, to one that is still considering light rail as a preferred transit option.

The Grand Jury recognizes that each Orange County city already involved in a light rail project views light rail not only as an important transit option for their city, but also as a potential catalyst for economic growth. The Grand Jury also recognizes the City of Fullerton city council has not yet made a policy decision to pursue light rail as its preferred transit option for the future. However, the fact that funding for a light rail system option can be spread over a large number of financing sources makes that possibility very attractive.

Finally, this report provides some insight into economic development and return on investment (ROI) concepts that could impact all of Orange County if development of light rail systems can be incrementally and successfully pursued.

METHODOLOGY

The Grand Jury has taken the following actions to complete this report:

- Reviewed San Diego and Los Angeles County second-generation light rail systems;
- Examined the role of OCTA in leading development of light rail in Orange County and in working with the Federal Transportation Authority to obtain New Starts Grant funding;
- Briefly examined ROI expectations that can accompany light rail development;
- Interviewed OCTA, Santa Ana and Garden Grove senior staff involved in development and management of the OC Streetcar Project;
- Interviewed Anaheim senior staff involved in the Anaheim Rapid Connection (ARC);
- Interviewed Fullerton senior staff concerning prior studies for use of light rail in Fullerton; and
- Verified report facts through multiple interviews, cited references and official documentation.

INVESTIGATION AND ANALYSIS

Orange County and Light Rail Development, Analysis and Political Reality

Until 2005, efforts to develop second-generation light rail in Orange County in parallel with Los Angeles and San Diego counties had not been very successful.

Despite major changes in policy and sales tax use in both Los Angeles and San Diego counties over the past 25 years, Orange County has chosen not to follow suit. Even after public approval

of the M2 one-half cent sales tax in 2006, which provided some limited funding in support of alternate public transit systems such as light rail, seventy-five percent of that Orange County sales surtax remained focused on roads and highways. As a result, while urban growth gridlocked road and freeway systems, and smog concerns affected Orange County as much as Los Angeles and San Diego counties, efforts to reduce traffic congestion by widening roads and freeways, or sequencing traffic lights seemed to take priority.

Secondly a good portion of south Orange County views itself as not representative of any high density, urban community. As such, this population has not been overly interested in funding transportation options such as light rail systems that may be of more value to older North Orange County cities with higher population densities. These differences often make it difficult to get agreement about how to spend taxpayer dollars in a manner that will support specific city initiatives perceived to be in the public’s best interest.

The reality is that there are 34 incorporated cities in Orange County, each with differing levels of need and support for transit. Additional considerations include variances in city age, infrastructure and tax base, public planning policy and efforts, and ability to accommodate change. Some OCTA staff have opined that many residents of Orange County cling to a more nostalgic view of Orange County as a quiet suburban bedroom community that is best served by cars, buses, roads and freeways. Some suggest that this nostalgic view may have contributed to the lack of the county’s progress towards light rail and, as in retrospect, policy decisions may appear short-sighted.

To further investigate why light rail development has proceeded much slower in Orange County than in Los Angeles and San Diego Counties, the Grand Jury reviewed 2010 US Census data for these counties, as well as a number of selected cities.

Table 1 below provides selected data:

Table 1: Los Angeles, Orange and San Diego County Comparative Demographics.

County Comparisons:	Orange County	Los Angeles County	San Diego County	
2010 Population:	3,010,232	9,818,605	3,095,313	
Land Size in Square Miles:	791	4,058	4,207	
Density (Pop.(1000)/sq.mi.)	3,807	2,420	736	
Orange County Cities:	Santa Ana	Garden Grove	Anaheim	Fullerton
2010 Population:	324,528	170,253	336,264	135,161
Land Size in Square Miles:	27	18	50	22
Density (Pop.(1000)/sq.mi.)	11,901	9,570	6,748	6,047
Meets Urban Core City Definition:	Yes (7,500/sq.mi.)	Yes (7,500/sq.mi.)	No	No

Light Rail: Is Orange County on the Right Track?

Los Angeles County Cities:	Los Angeles	E. Los Angeles (1)	Santa Monica	Long Beach
2010 Population:	2,504,251	501,237	89,736	569,100
Land Size in Square Miles:	267	41	8	63
Density (Pop.(1000)/sq.mi.)	9,388	12,168	10,664	8,984
Meets Urban Core City Definition:	Yes (7,500/sq.mi.)	Yes (7,500/sq.mi.)	Yes (7,500/sq.mi.)	Yes (7,500/sq.mi.)
(1) Part of the City of Los Angeles but separated out by US Census Data.)				
San Diego County Cities:	San Diego	Carlsbad	Oceanside	
2010 Population:	2,259,401	105,459	167,086	
Land Size in Square Miles:	696	38	41	
Density (Pop.(1000)/sq.mi.)	3,245	2792	2,792	
Meets Urban Core City Definition:	No	No	No	
State and County Quickfacts. Quickfacts.census.gov.2010. Web. 11 Jan. 2016.				

The data show that the population density of portions of Los Angeles and Orange Counties approaches or exceeds 7,500 residents per square mile, meeting the industry definition of urban, core city (*Urban Cores*). This is not the case in San Diego County, particularly the City of San Diego which has a population density of approximately 3,245 residents per square mile.

The Grand Jury also noted that the land size of Los Angeles and San Diego Counties in square miles is similar, and that these counties are over five times the size of Orange County.

The Orange County cities selected by the Grand Jury for census data comparison match those selected for report analysis. The San Diego County cities selected for data analysis were San Diego and Oceanside, and the Los Angeles city choices were Santa Monica and Long Beach, along the Metro’s most successful Blue Line, running from downtown LA to Long Beach.

Similarities in population core densities exist between much of greater Los Angeles and north Orange County. Population demographics and city infrastructure age and tax base issues for these areas are also similar. Analysis of south Orange County as it morphs into greater San Diego County shows a trend toward lower population density, as well as newer city infrastructure.

In short, the Grand Jury finds evidence suggestive that there is no demographic answer as to why light rail system development is more readily supported in both Los Angeles and San Diego Counties than in Orange County.

Perhaps the best clues to the lack of support for light rail development in Orange County may simply rest with the diversity of cities within the county and the fact that Orange County has done little to effectively market a light rail concept. Until OCTA was created no single entity in Orange County had sufficient gravitas and motivation to initiate such a concept. This was not the case in Los Angeles and San Diego, both of which had a long history and understanding of light rail systems, as well as multiple city interests in making such a system work.

Although California state law created OCTA to serve as the public sector transportation planning body and mass transit service provider for Orange County (Orange County Transportation 1), this did not immediately facilitate county-wide transportation planning.

An example is the 1990s OCTA initiative to create a 28 mile Centerline Project linking several North Orange County high density cities with the Orange County Airport. As presented by OCTA, the \$1.04 billion light rail component of this project was accompanied by an additional \$185 million street widening component as well as an additional \$544 million bus service expansion component. (Mallinckrodt, 1-2)

The case might be made that planners were trying to present a balanced concept, but public reaction to the size and cost of the project was not positive and some analysis even suggested there would be no net reduction in traffic congestion or improvement in person-miles/day capacity. As a result, the scope of the project was changed to reduce estimated costs (Mallinckrodt, 1-2).

While local officials had hoped that the Federal Government would step in and pay for half of the proposed project's expense, the county's congressional delegation provided no support and this, along with the loss of local political confidence, resulted in the project being dropped in 2005 (Weikel, 2).

Orange County and Light Rail Development, a Change in Leadership and Focus

In 2006 OCTA decided to follow a more measured approach to planning, which included possible use of a light rail system as an alternate for mass transportation. The "Go Local" program was created. "Go Local" was a four step process for planning and implementing city-initiated transit extensions to OCTA's Metrolink commuter rail line. Steps one and two were funded via Measure M1.

Step one required each city to submit to OCTA a fixed-guideway concept proposing connection between a Metrolink station in that city and nearby destination/activities centers. The OCTA Board of Directors would then evaluate the city's concept, and if it met approval, would award \$5.9 million to the city so that it could continue proposed project planning and evaluation.

This effort would then lead to Step 2 which was completion of an alternative analysis, conceptual engineering and both state and federal environmental clearance. Steps 3 and 4 would then neatly mesh with acceptance by OCTA and the Department of Transportation (DOT), funded by Measure M2 and state and federal sources (Anaheim Go Local, ES-1).

The stated objective of "Go Local" was to satisfy Measure M1 sales tax requirements by asking all 34 of Orange County's incorporated cities to consider new ways to improve transit extensions to the Metrolink Stations. This plan would broaden the reach of Orange County's backbone rail

system to key employment, population and activity centers. OCTA offered funds to each city to explore new ideas, and several cities responded affirmatively. The cities of Santa Ana, Garden Grove and Anaheim were the first to move ahead.

In 2006, Measure M2 was approved by Orange County voters, extending the Measure M1 half-cent local transportation sales tax for an additional 30 years. This tax extension was to be used to help fund projects that include bridge and road upgrades, as well as projects associated with Metrolink improvements and would go into effect in 2011. A portion of this sales tax, called Measure M2 Project-S, was designated to provide funding to connect people between Metrolink stations in Orange County and their final destinations at activity and employment centers (Transit Extensions, 1-3).

In 2007, positive action at the city level began to take place. Santa Ana, Garden Grove and Anaheim, along with OCTA, began feasibility and environmental studies aimed at developing light rail or other transit solutions that would better service their Metrolink Transit stations and support each city's community.

In 2013 the city of Fullerton used Southern California Association of Governments (SCAG) funding to commission a study of transit options, including the potential use of light rail, to connect California State University Fullerton (CSUF) and its Metrolink Transportation Center.

These steps, although incremental, provided a much better venue for local political and public consideration, as well as the ability for each city to address "local impact" concerns. OCTA became the core coordinating agency, assuming both a leadership and coordinating role within Orange County. OCTA's role took the place of the "core city" presence that had characterized both Los Angeles and San Diego over the past 25 years.

Return on Investment Expectations

During much of the current federal administration, efforts to spur interest in transportation capital investment and development have continued to be supported through the President's Annual Budget process.

In 2008, the Department of Transportation's Federal Transit Administration (FTA) provided oversight of a Transit Investments in Greenhouse Gas and Energy Reduction (TIGGER) program that provided public agencies with one-time grants to improve energy efficiency. The TIGGER program received \$100 million in Recovery Act funding. FTA received applications for 561 projects totaling over \$2 billion, severely limiting grant project approval.

In October 2010, the United States Department of the Treasury, along with the Council of Economic Advisors, published an Economic Analysis of Infrastructure Investment report which concluded that correct investment had the potential to create a more livable community for

working Americans. To that end these agencies identified a number of principles for transportation investment:

- To provide more transportation choices in order to decrease household transportation costs, reduce dependence on oil, improve air quality and promote public health;
- To improve economic competitiveness in neighborhoods by giving people reliable access to employment centers, educational opportunities, services and other basic needs;
- To target federal funding toward existing communities – through transit-oriented development and land recycling; and
- To align federal policies and funding to remove barriers to collaboration; leverage funding and increase the effectiveness of programs to plan for future growth (United States. An Economic Analysis, 13-23).

In July 2012, Congress enacted the Moving Ahead for Progress in the 21st Century Act (MAP-21). This act outlined the New Starts program and the detailed process that proposed projects must satisfy to be eligible for capital investment grant funding from the Federal Transit Administration (FTA). The New Starts Program supports same-grade light rail projects.

MAP-21 specifies that proposed New Starts projects must be new fixed guideway projects or extensions to existing fixed guideway systems with an estimated capital cost greater than \$250 million. To qualify for the New Starts Program, the grantee must comply with a very specific list of program requirements showing:

- A funding commitment for at least 30% of non-grant investment;
- Selection of a locally preferred transportation alternative;
- Completed feasibility and environmental studies verifying no local impact; and
- A project management plan detailing key activities, milestones and elements, culminating with an expected completion date (*Final Interim Policy Guidance IV, 2-3*).

It is this specific program that Orange County, through OCTA, is using. At present OCTA sees little possibility of Congress ending this program as it has consistent bipartisan support and presents a direct link between infrastructure development, jobs and expectations for a positive Return on Investment (ROI). As such, it is a long term capital investment effort.

The U.S. Department of Transportation's portion of the President's proposed Budget for FY 2017, supporting the FTA Capital Investment Grant Program for New Starts Not Yet under Construction, includes a \$125 million line item for the Santa Ana and Garden Grove Streetcar that should be used in FY 2017. On February 11, 2016 the *Orange County Register* published an opinion piece where the author thought Congress should trim this amount. The public should note, however, that this is almost half of the total project funding required and demonstrates

DOT's willingness to speed up the project, not slow it down. This is grant money that should be authorized by the Congress for use beginning October 1, 2016 (*Budget Highlights*, 41).

Admittedly, there will always be arguments as to the best way to spend taxpayers' money for transit systems. Also, the Grand Jury recognizes that all roads, freeways, and transit systems are historically subsidized to a large degree by the public. Additionally, ridership and therefore the ability of any one system to pay more of its own costs rises or falls with fare levels, the price of gasoline, and the necessity of the public to use public transit to get to a job.

On January 28, 2016, *The Los Angeles Times* published an article written by a Times reporter discussing declining bus, light rail and subway ridership trends over the past 30 years in both Los Angeles and Orange Counties. It correctly noted that both the Metropolitan Transportation Authority and OCTA are losing riders at an increasing rate. The article quotes the CEO of OCTA as saying, "I don't know if this is long-term, but it doesn't feel like it's temporary when we have been dealing with 36 straight months of declining ridership."

In Orange County there continues to be public debate over changing bus routes so that OCTA can be both more efficient and cost effective, and it is apparent that it is difficult to separate Southern California drivers from their cars. There is also public debate concerning spending taxpayer money for light rail systems versus more bus lines, seeing one as less flexible than the other. Again, while all these arguments have merit in one form or another, they generally do not address long term requirements or changes in demographics that can reasonably be expected. These are the facts that transportation planners need to deal with.

Lastly, it is apparent that any public transportation authority such as OCTA must constantly try to find the best balance for services as it reacts to what the public chooses to do. Given the ability to make a choice, the transit rider will most likely buy a car in order to have the most personal flexibility. This probably will not change and therefore ridership and the ability of any one transit system to pay more of its own costs is dependent on the local economy and job availability, as well as if the system runs on time, has the best route, or is cost effective for those riding.

For those high density urban areas in Orange County pursuing or considering pursuit of a light rail system, the Grand Jury noted that Return on Investment (ROI) expectations differ for each city. Additionally, city policy and management objectives will vary depending on the city's tax base, gains or losses in development opportunities, or the current state of a city's budget. While each of these considerations may be the result of past policy decisions or have simply developed due to changes in the economy over time, each city must try to achieve the best balance for the good of the public.

To this point, city planners generally accept the following ROI possibilities as being associated with development of light rail, recognizing they are not absolutes:

- That real estate values within about 1/8th of a mile of those areas supported by light rail will normally increase by some increment;
- That new development is attracted by fixed-guideway systems that by definition do not move;
- That urban planners will normally decrease parking requirements for new developments based on the expectation that a number of people living near a light rail system will elect not to drive cars;
- That based on experiences in a number of urban areas nationally, light rail systems tend to create a positive impact on businesses and restaurants that are serviced by the system because the traveling public often finds it easier to access them; and
- That existence of a light rail system often provides a boost to public perception of how a city is managed or how a city presents itself to visitors and businesses.

The OC Streetcar Project Connecting Santa Ana and Garden Grove

The OC Streetcar Project is the most developed of the Orange County light rail systems considered by the Grand Jury in terms of its support from the public, local politicians, OCTA and the U.S. Department of Transportation. Substantive work on this project began in 2006 and Santa Ana has invested approximately \$7 million in its environmental impact report.

OCTA has identified and scheduled project funding to be provided by California Cap and Trade, the Orange County M2-Project S sales tax, the Department of Transportation New Starts Program and monies from the Federal Congestion Mitigation and Air Quality Improvement Fund.

The OC Streetcar Project is a 4.1 mile double track system that runs from the Santa Ana Regional Transportation Center (SARTC) in Santa Ana, through Santa Ana's downtown to the Civic Center complex and then northwest across the Santa Ana River to Garden Grove and Harbor Boulevard. The estimated cost of the project is \$70 million per mile of double track. This includes all utility work, light rail cars, stops and signage and a maintenance facility. Figure 1 provides a graphic representation of the system.

Project Alignment / Alineamiento del Proyecto / Triển Khai Dự Án



Figure 1: OC Streetcar Project Alignment. Courtesy of OCTA.

Excerpts from the Santa Ana to Garden Grove Fixed Guideway Project presentation to the OCTA Transit Committee featured the following supportive talking points:

- Santa Ana and Garden Grove both:
 - Have large transit dependent populations;
 - Require transit connection from the SARTC to job and government centers; and
 - Support establishment of a Garden Grove Transit Hub to link OC Streetcar with the Harbor Boulevard commercial and hotel corridor.
- Immediate project benefits include:
 - When completed, a reduction of traffic congestion on city streets and freeways;
 - Service to key destinations in Santa Ana and central Orange County; and
 - A commuting option, improved air quality and some reduction in automobile dependency.
- Santa Ana and Garden Grove’s commitments to the project are:
 - Financial participation in streetcar operations via Memoranda of Understanding with OCTA;
 - Staff and consultant support during planning; and
 - Provision of experienced leadership.

Santa Ana views the OC Streetcar System as a means to upgrade its downtown image, as well as a way to increase property values and local business. It focuses on increasing Metrolink ridership for the many people who work in the Civic Center complex by offering them an alternative to finding parking. The Civic Center Complex encompasses the Federal Courthouse, Homeland Security Offices, County Government Offices, the Superior Court, the Sheriff/Coroner’s Offices,

the Central Jail complex and Santa Ana city government offices, in addition to the restaurants and businesses that provide services to these agencies.

Garden Grove views the OC Streetcar System as a way to increase use of hotels and parks associated with Harbor Boulevard, as well as a means to increase property values and spur new development around the planned Transit Center at Harbor Boulevard. As Garden Grove's major tax revenues are directly affected by tourist use of hotels and amusement parks, any means for increasing this revenue is important.

Both cities are actively seeking long term benefit for their public image, recognizing that completion of the OC Streetcar Project in 2020 will provide a first success model for the rest of Orange County.

In 2014, based on the OC Streetcar project efforts of the cities of Santa Ana and Garden Grove, the OCTA Board of Directors approved OCTA to serve as the implementer and owner/operator for the OC Streetcar Project. OCTA's assigned responsibilities for the OC Streetcar Project are:

- To serve as the grantee for the Federal New Starts Program;
- To serve as the lead agency for continuing project development, engineering and construction;
- To own, operate, and maintain the system;
- To procure all services necessary to implement the project; and
- To provide annual operating subsidies net of fare box, city contribution and other revenues (OCTA Board Actions 1).

In May 2015, the FTA approved OCTA's entrance into Federal New Starts Program to continue funding and development of this project. By June 2015 an initial Cost, Risk Assessment, and Value Engineering (CRAVE) study for OC Streetcar Project was completed and in July 2015 the FTA assigned a project management oversight consultant to the project. The OC Streetcar Project is now entering its New Starts Engineering Phase (*OC Streetcar*).

Project completion, testing and operations are expected by early 2020 and all stakeholders are looking forward to a first for Orange County.

The City of Anaheim and the Anaheim Rapid Connection (ARC) Project

In 2006, Anaheim also took advantage of OCTA's "Go Local" program to establish and publish a Transit Master Plan. Then in 2011, Anaheim entered into a number of Cooperative Agreements with OCTA to advance the project. In 2014, OCTA approved Anaheim's selection of fixed guideway light rail as the locally preferred alternative for augmenting transit extensions for Metrolink.

The initial Alternative Analysis completed in 2014 showed little or no impact from the proposed project alignment. However, in 2015, the Anaheim city council directed staff to study an additional alignment to minimize any need to acquire private property for right of way access. Figure 2 provides a graphic of the new alignment.

As a result, a second environmental impact study was commissioned and is expected to be completed late 2016. This study is partially funded through the Anaheim Tourism Improvement District (ATID), a public/private entity created by an Anaheim city ordinance that collects a tax on hotel use to be used to promote tourism transportation. ATID has paid \$1.3 million toward the second environmental study.

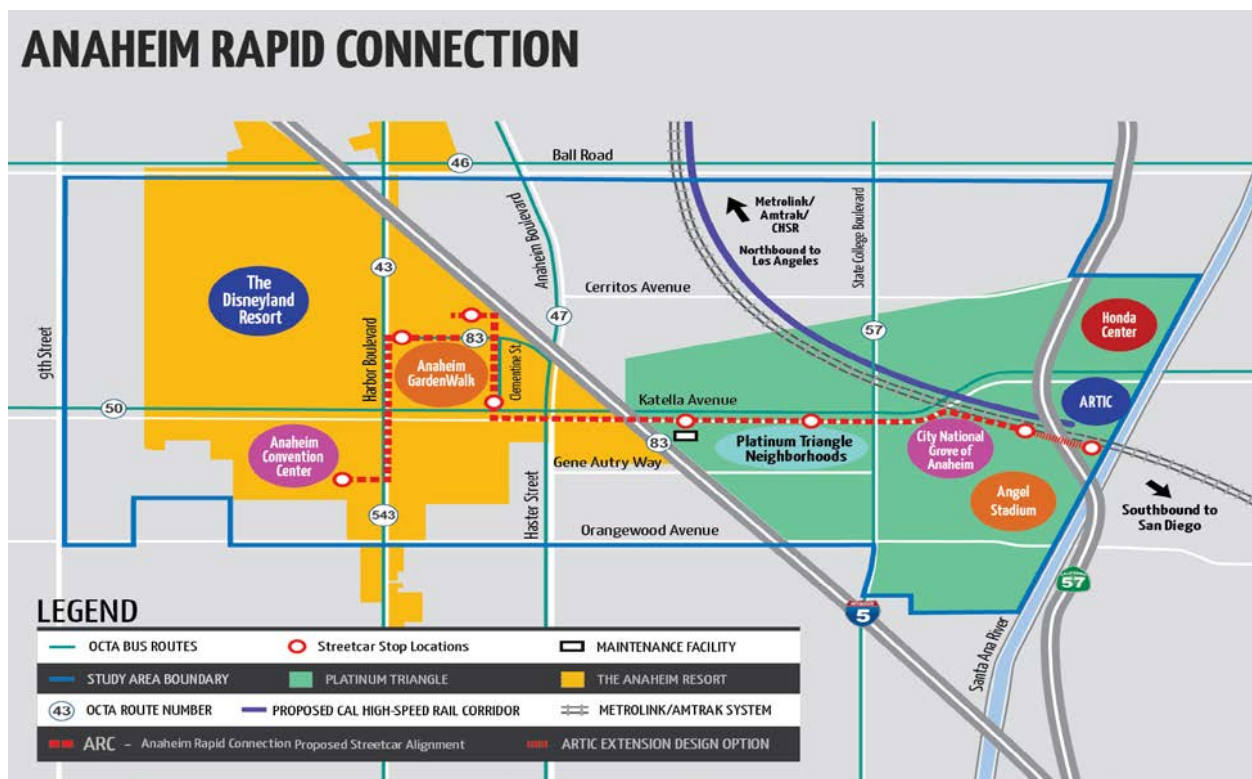


Figure 2: ARC Alignment. Courtesy of City of Anaheim

The ARC, as now proposed, is a 3.1 mile double track system that runs from the Anaheim Regional Transportation Intermodal Center (ARTIC) next to Angel Stadium, along Katella Avenue through the Platinum Triangle to Clementine Street. It will turn west to Harbor Boulevard and then south to Convention Way. The project will connect to a multi-use station at the intersection of Clementine Street and Disney Way which will be constructed by Disneyland. This light rail system will serve the Anaheim Convention Center as well as the hotels and services attendant to the Anaheim convention center and Disneyland.

The estimated cost of the ARC project is \$100 million per mile of double track which includes utilities, streetcars, stops, signage and a maintenance facility. While this is more than the \$70 million per mile estimated for the OC Streetcar Project, Anaheim has elected to tailor its proposed project so that it has station/stop upgrades that match ongoing city improvements. It also plans to buy additional light rail cars.

The Anaheim Visitors Bureau is very supportive of the ARC and views it as another transportation option for the city. In addition, the Visitors Bureau is closely aligned with the Anaheim Resort Transportation (ART), a private non-profit bus system run by Anaheim's hoteliers. The ART was created because it made more sense to have a shared bus system linking Anaheim's resorts and hotels than each hotel having its own shuttle buses. When the ARC project is completed, ART plans to reconfigure routes and service to take advantage of the ARC's routes and stations. This model has shown itself to be effective in San Diego and addresses some objections about light rail not being accessible to the public because it runs on a fixed route.

In addition to the creation of the new Star Wars venue at Disneyland, which is expected to bring significant new tourism, Anaheim is projecting major business and residential growth by 2021. Zoning for the Platinum Triangle allows for 18,988 residential units, 14.1 million sq. ft. of office space and 4.8 million sq. ft. of retail space. The Platinum Triangle includes Angel Stadium, the Honda Center and the Grove of Anaheim (*Initial Study* 7-8). According to the *Orange County Register's* November 19, 2015 Anaheim Bulletin, scheduled hotel and resort construction in Anaheim should create an additional 1,555 rooms by the end of 2016 and another 2,129 by 2021. On a somewhat longer horizon, Anaheim projects another 3.4 to 10 million sq. ft. of office and retail space requirements, 65% within 1/8 mile of projected light rail stops.

This forecasted development shows Anaheim becoming even more of a center for tourism and business, as well as a more exciting place to live.

Anaheim views the ARC project as primarily focused on providing enhanced mobility for the public. It also acknowledges that use of light rail systems can create economic development and welcomes that concept. A key phrase is that the proposed light rail system will encourage "walkability," the ability for workers and tourists to move around Anaheim's urban core, from home to stores, work and entertainment, without having to use a car.

Funding for the ARC Project will most likely be provided by California Cap and Trade, Orange County M2-S Sales Tax, the Department of Transportation New Starts Program and Federal Congestion Mitigation and Air Quality Improvement grants; however, these entities have not yet allocated the money.

Anaheim's resort industry currently does not completely satisfy the Federal Transit Authority's more traditional industry-based ridership model which assumes commuters are going to manufacturing, production or commercial jobs, rather than those that work in equally important services and entertainment jobs that primarily cater to the tourist industry. Because of this issue some OCTA Board members are concerned that the ARC will not qualify for the New Starts Program. To counter this concern, the Anaheim city staff is working closely with the FTA to define a ridership model that recognizes Anaheim service and resort worker commutes as well as resort guest mobility and large event transit needs.

Anaheim expects to be successful in this joint effort but recognizes this will require patience and a long-term commitment. The Grand Jury considers Anaheim to be "on the right track."

The City of Fullerton's Efforts to Study Use of Light Rail

While Fullerton has studied the potential for light rail as a transit option, the City Council has not yet given direction to pursue a specific project.

Fullerton has long been a railroad town and continues to see rail as most important to its future. Fullerton hosts a number of heavy rail and commuter rail providers. Along with Amtrak's Pacific Surf liner and Southwest Chief lines between San Diego and Los Angeles, there are seven miles of Metrolink rail joining the Metrolink 91 Line from Riverside and the Orange County Line, then proceeding into the heart of Los Angeles.

In addition to the above, there exists an unused Union Pacific ROW that could become a light rail extension with the purchase of an additional 2.5 miles of ROW. Fullerton is also interested in the long term potential for a light rail link with the Los Angeles Metro System and in 2010 sent a Letter of Support concerning this to the City of Whittier.

Fullerton's Metrolink Transportation Center, although small in size, leads all other Orange County Metrolink stations in ridership. By 2020, an anticipated 4,000 Metrolink riders per day are expected to use this transportation center. Reasons include ease of access and parking, as well as an interesting downtown with entertainment and restaurants. A large component of this ridership is passengers who commute the approximately 30 minutes from Orange County to Los Angeles and back each day.

The California High Speed Rail Authority (CHSRA) has identified the Fullerton Transportation Center for a possible skip-stop service on the Los Angeles to Anaheim portion of the high speed rail project. Skip-stop service reduces rail travel times and increases rail line capacity by allowing one train to wait on a parallel rail line while a faster train passes through.

The key to Fullerton’s ability to use light rail rests with the two rush periods experienced by Metrolink each weekday, from 6 AM to 8 AM each morning and then from 4 PM to 6 PM each evening. By providing transit extension capability that does not necessarily require the use of automobiles, Fullerton seeks to open its historic downtown and schools to transit riders throughout Orange County, and sees this as a way to capitalize on what is an expanding population of transit riders.

The City wants to encourage commuters to use its historic downtown for dinner and entertainment after their work day and would like to see California State University at Fullerton (CSUF) students use Metrolink and a transit link to get to class, instead of using limited college parking. Finally, Fullerton is host to approximately 300 contract manufacturers that enjoy easy access to Los Angeles for business development.

In 2008, Fullerton participated in the OCTA “Go Local” program to study various ways to increase Metrolink ridership. At that time, the idea of a link connecting the Metrolink Transit Center with the Fullerton college complex was developed. Then in 2013, using money from SCAG, channeled through OCTA, Fullerton commissioned a College Connector Study to examine connecting its Metrolink Transit Center to CSUF and the college complex in the Eastern part of town. CSUF continues to be fully engaged in this process.

In February, 2014 the Fullerton city staff presented the College Connector Study to the Fullerton city council. The Council authorized submission of the study to OCTA as an “unconstrained” project involving light rail as one option and directed staff to move ahead with planning (Van Stratten 1).

The proposed transit alignment would be approximately four miles running from the Transit Center at 120 E. Santa Fe Avenue, through Fullerton’s downtown area to the CSUF complex. While Fullerton has not made a final alignment selection, a route that generally follows both Commonwealth Avenue and Chapman Avenue in a loop makes sense.

Finally, Fullerton is looking for ways to capitalize on possible future growth along the Harbor Boulevard corridor and to attract residents and businesses interested in living in Orange County, and commuting to Los Angeles.

The Fullerton city council will need to make a number of policy decisions in order to become fully engaged with OCTA and Department of Transportation processes. These will most likely include:

- Full endorsement of light rail as a policy matter;

- Policies that encompass CSUF as well as the other colleges on the eastern side of Fullerton;
- Completion of a transportation plan and feasibility study;
- Completion of an environmental plan; and
- A commitment to provide financial support to help make all the above occur.

The Grand Jury supports Fullerton’s efforts and notes that OCTA has earmarked approximately \$3.5 million to help the city advance transit options once the city council has provided policy direction.

COMMENDATIONS

The Grand Jury would like to commend the employees of OCTA and the cities interviewed in the course of this investigation for their hard work and dedication to advancing light rail and other transit options in Orange County. Each seeks to promote the public good and economic growth in their communities and within Orange County based on their understanding of the benefits of various public transportation options. The Grand Jury also commends each for recognizing the need for a longer term County Transportation Master Plan that could help create an intra-county network of light rail and other transit options, as well as additional rail links with Los Angeles County.

FINDINGS

In accordance with *California Penal Code* Sections 933 and 933.05, the 2015-2016 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 “Light Rail: Is Orange County on the Right Track?” the 2015-2016 Orange County Grand Jury has arrived at five principal findings, as follows:

F.1. The lack of development of second-generation light rail in Orange County can be closely linked to the reality of different transit priorities for the thirty-four diverse cities in the county.

F.2. Orange County would benefit from the examples of Los Angeles and San Diego Counties with their history of promoting centrally organized and run light rail systems. As a result, these counties were well-positioned to plan for and develop second generation light rail systems expansion in the 1980’s.

F.3. Approval of OCTA as implementer and owner/operator of the OC Streetcar Project, and as subsequent grantee for the Federal New Starts Program, has created the basis for enabling further light rail development in Orange County to include public outreach and marketing/promotion efforts.

F.4. Creation by OCTA of a draft light rail Master Plan for Orange County that includes both intra and inter county transit connectivity options would be of considerable value to the public.

F.5. The long project times associated with light rail system establishment require not only careful planning and coordination by OCTA, but also consistent efforts to inform the public by those Orange County cities involved in development or possible development of light rail projects.

RECOMMENDATIONS

In accordance with *California Penal Code* Sections 933 and 933.05, the 2015-2016 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 “Light Rail: Is Orange County on the Right Track?” the 2015-2016 Orange County Grand Jury makes the following eight recommendations:

R.1. OCTA should initiate another “Go Local” effort in FY 16/17 encouraging more Orange County cities to advocate for light rail or other transit connections to assist Metrolink ridership. (F.1., F.3.)

R.2. OCTA should organize and lead focus groups during FY 16/17 to gauge public reaction to transportation options for Orange County that will be affected by the changes in working and population centers forecast for the next 20 years. (F.1., F.3.)

R.3. OCTA should use multi-lingual (English, Spanish, Korean and Vietnamese) Web and printed marketing materials to highlight Metrolink Transportation Center and light rail connectivity efforts in Orange County. (F.1., F.3.)

R.4. OCTA should create a draft phased light rail Master Plan during FY 16/17 that links the County’s high density urban areas and connects with Metrolink and Los Angeles County’s Metro light rail system. (F.4.)

R.5. OCTA should publish this Master Plan on its Website once it is created and provide a Website progress update every six months. (F.4.)

R.6. Santa Ana and Garden Grove should create links on their Websites within six months of receipt of this report that show their efforts to complete the OC Streetcar Project and then update these Websites every three months. (F.5.)

R.7. Anaheim should maintain its link on the city's Website that shows efforts to successfully complete the ARC project and then update that Website every three months. (F.5.)

R.8. Fullerton should create a link on the city's Website that describes the Fullerton City Council's policy decision process concerning the best transit option to support the College Connector Plan, and then update this Website every three months. (F.5.)

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 County Official shall comment on the findings and recommendation pertaining to the matters under that elected official's *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), detail, 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 official 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 following governing bodies with 90 days of the date of publication of this report:

90 Day Required Responses:	F1	F2	F3	F4	F5
Board of Directors, OCTA:	X	X	X	X	X
City Council, City of Santa Ana:					X
City Council, City of Garden Grove:					X
City Council, City of Anaheim:					X
City Council, City of Fullerton:					X

90 Day Required Responses:	R1	R2	R3	R4	R5	R6	R7	R8
Board of Directors, OCTA:	X	X	X	X	X			
City Council, City of Santa Ana:						X		
City Council, City of Garden Grove:						X		
City Council, City of Anaheim:							X	
City Council, City of Fullerton:								X

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APPENDICES

Appendix A: Glossary

Anaheim Regional Transportation Intermodal Center (ARTIC)

The Metrolink Commuter rail station and transportation hub located at East Katella Avenue in Anaheim, CA. The ARTIC may become a terminal for the ARC Light Rail project being considered by the city of Anaheim that could eventually link the ARTIC with Anaheim's Platinum Triangle, Convention Center and Cultural Center.

Anaheim Tourism Improvement District (ATID)

On Sept. 4, 2010 the Anaheim City Council established the Anaheim Tourism Improvement District (ATID). This Special District is specifically designed to help fund promotion of local tourism and convention related programs, as well as transportation improvements helping to connect the ARTIC with the Anaheim Resort and Platinum Triangle. The ATID resolution sets aside 25% of its annual funding for planning, design, construction and operation of transit improvements. About \$3 million is generated annually that can be used to support ARC. In 2015 \$1.3 million was provided to help fund a second Environmental Impact Study required for Anaheim to meet Federal New Starts Program requirements.

Federal New Starts Program as defined by US DOT/FTA

Authorized by the Moving Ahead for Progress in the 21st Century Act (MAP-21), enacted (by Congress) on July 6, 2012, this law...authorizes (a)...Capital Investment Grant Program (under the U.S. Department of Transportation, Federal Transit Administration)...which)...specifies ...New Starts projects must be fixed guideway projects or extensions to existing fixed guideway systems (and therefore)...can include...streetcars (Final Interim Policy Guidance 1-2).

High Density, Urban Core Cities

Defined as Urban Cities with a per square mile population of 7,500 or more people.

OC Streetcar as defined by OCTA

...the first modern streetcar project to be built in Orange County (to) serve Santa Ana's historic and thriving downtown...Expected to begin carrying passengers in late 2020; it will operate along a 4.15 mile route that connects the Santa Ana Regional Transportation Center (SARTC) and a new transit hub at Harbor Boulevard and Westminster Avenue in Garden Grove (OC Streetcar 1-3).

Santa Ana Regional Transportation Center (SARTC)

The Metrolink Commuter Rail station and transportation hub located at 1000 E. Santa Ana Blvd. in Santa Ana, CA. The SARTC is currently operated by the City of Santa Ana and will become one of the transit terminals for the OC Streetcar project.

Southern California Association of Governments (SCAG)

SCAG was established in 1965 as a California Joint Powers Authority. As an association of local governments and agencies, SCAG meets voluntarily to address regional issues for Imperial, Los Angeles, Orange, Riverside, San Bernardino and Ventura Counties. SCAG is designated under federal law as a Metropolitan Planning Organization and under California state law as a Regional Transportation Planning Agency and a Council of Governments. The agency provides long-range regional transportation planning that includes consideration for community strategy and growth, as well as regional housing requirements and air quality management.

Appendix B: Transit Options, Metrics Analysis by Selected City

Grand Jury Analysis of Preferred Transit Extension Option for Santa Ana and Garden Grove: (Metrics: Transit rider attractors, funding sources and current project status.)		
	<u>Santa Ana (OC Streetcar)</u>	<u>Garden Grove (OC Streetcar)</u>
Transit Rider Attractors	Transit Rider Attractors	Transit Rider Attractors
Manufacturing:	Yes	Yes(Largely Contract)
Sports Venues:	Yes (School)	Yes (School)
Metrolink Corridor/Amtrak Line:	Yes	Via Santa Ana
Convention Center:	No	No
City Government Center:	Yes	Yes
County Government Center:	Yes	No
US Government Center:	Yes	No
General Corporate Interest:	Yes	Yes
Destination Hotels	Yes	Yes
Destination Restaurants/Bars:	Yes	Yes
Regional Shopping Malls:	Yes	No
Cathedral:	No	Yes
Schools and Universities:	Yes	Yes
Funding Sources:	Funding Sources:	Funding Sources:
Initial SCAG or OCTA Go Local Support:	Yes, via Go Local Program	Yes
Special District Financial Support:	No	No
CA Cap & Trade:	\$40.00M	Yes
Orange County M2S Sales Tax:	\$55.92M	Yes
Dep. Of Trans. New Start Program:	\$144.37M Program Total	Yes
Proposed President's Budget:	\$125M for FY2017	Yes
Fed.Congestion Mitigation & Air Qual. Improv:	\$48.45M	Yes
Current Project Status:	Current Project Status:	Current Project Status:
Project Size in Miles:	4.1 miles of double track	Yes
Feasibility and Environmental Studies Published:	Completed	Completed
State and Local Funding Identified:	Completed	Completed
DOT approval to enter New Starts Program:	Completed	Completed
RFP release for Streetcar design:	Completed	Completed
CRAVE study publication:	Completed	Completed
DOT Project Mgmt. Consultant assigned:	Completed	Completed
Project Final Design/Engineering:	2015-2017	2015-2017
Project Construction:	2017-2020	2017-2020
Project Completion/Operations Begin:	2020	2020

Light Rail: Is Orange County on the Right Track?

**Grand Jury Analysis of Preferred Transit Extension Option for Santa Ana and Garden Grove:
(Metrics: General Information, relationship with OCTA, advocates & opponents and economic goals.)**

	<u>Santa Ana (OC Streetcar)</u>	<u>Garden Grove (OC Streetcar)</u>
General Information:	General Information:	General Information:
Meets M2S Criteria for Metrolink Transit Feed:	Yes	Via Santa Ana
Regional Transportation Center Linkage:	SARTC (AMTRAK/Metrolink)	Via Santa Ana
Current Project Investment by City:	\$6.976M	Linked to Santa Ana Effort
Est. cost per mile double track:	\$70M	\$70M
Increases mobility and flexibility of Labor Pool:	North County Regional Impact	North County Regional Impact
Relationship with OCTA:	Relationship with OCTA:	Relationship with OCTA:
Initial OCTA funded for "Go Local" Program:	Go Local Grant for Transit Study	Via Santa Ana
Initial Cooperative Agreement with OCTA:	C-6-0692 dtd. Mar. 21, 2007 as Amended	Re: Santa Ana Table
OCTA Board approves Proj. Mgmt & Ownership:	Aug. 11, 2014	Aug. 11, 2014
Add. Coop. Agreements with OCTA:	C-8-1157 dtd. Sep. 9, 2008 as Amended	Re: Santa Ana Table
Add. Coop. Agreements with OCTA:	N/A	Re: Santa Ana Table
MOU w/OCTA for Proj. Compl. & Ops. Funding:	MOU C-5-3295 Eff. 8/31/2015	MOU C-5-3418 Eff. 9/22/2015
Advocates:	Advocates:	Advocates:
Mayor:	Yes	Yes
City Council:	Unanimous	Unanimous
OCTA Board of Directors:	Majority	Majority
Light Rail knowledgeable City Staff:	Very	Very
Theme Parks & Sports Venues:	Yes (via Garden Grove)	Yes
Destination and Business Hotels:	Yes	Yes
Newspaper/OpEd/Blog:	Light rail project needs support	Light rail project needs support
Other Advocates:	Not identified	LaTerra Develop. LLC Invest.@ Harbor Blvd
Opponents:	Opponents:	Opponents:
Newspaper/OpEd/Blog:	Articles: "Buses more cost effective"	Articles: "Buses more cost effective"
Individuals:	Interview: Some downtown Business Owners	None Identified
Economic Goals:	Economic Goals:	Economic Goals:
Although these economic goals may not be all inclusive, based upon the Return on Investment expectations from Report interviews, they represent a reasonable order of priority.	To increase the Business & Tax Base.	To increase Tourist Trade & Tax Base.
	To increase ROW Adjacent Prop. Values.	To contribute to a Balanced City Budget.
	To enable a more upscale Downtown Image.	To increase ROW Adjacent Property Values.
	To attract New Business.	To attract New Business.
	To increase Transit use via Garden Grove.	A possible Harbor Blvd. N. Rail Extension.

**Grand Jury Analysis of Preferred Transit Extension Options for Anaheim and Fullerton:
(Metrics: Transit rider attractors, funding sources and current project status.)**

	<u>Anaheim (Anaheim Rapid Connection)</u>	<u>Fullerton (No Policy Decision)</u>
Transit Rider Attractors	Transit Rider Attractors	Transit Rider Attractors
Major and Light Manufacturing:	Yes(Largely Contract)	Yes(Largely Contract)
Sports Venues:	Yes	Yes
Metrolink Corridor/Amtrak Line:	Yes	Yes (Two Metrolink Corridors)
Convention Center:	Yes	No
City Government Center:	Yes	Yes
County Government Center:	No	No
US Government Center:	No	No
General Corporate Interest:	Yes	Yes
Destination Hotels	Yes	Yes
Destination Restaurants/Bars:	Yes	Yes
Regional Shopping Malls:	Yes	No
Cathedral:	No	No
Schools and Universities:	Yes	Yes
Funding Sources:	Funding Sources:	Funding Sources:
Initial SCAG or OCTA Go Local Support:	Yes, via Go Local Program	Yes, SCAG \$ for College Connector Study
Special District Financial Support:	ATID (\$1.3M for Environ. Study)	No
CA Cap & Trade:	Pending Fed New Starts Process Approval	TBD
Orange County M2S Sales Tax:	Pending Fed New Starts Process Approval	TBD
Dep. Of Trans. New Start Program:	Pending Fed New Starts Process Approval	TBD
No	No	\$3.5M via OCTA Pending
Fed.Congestion Mitigation & Air Qual. Improv:	Pending Fed New Starts Process Approval	TBD
Current Project Status:	Current Project Status:	Current Project Status:
Project Size in Miles:	3.1 miles of double track	Approx. 4 miles of transit connection
Feasibility and Environmental Studies Published:	Environmental Study #2 in Process	Pending Policy Decision
State and Local Funding Identified:	Pending	Pending Policy Decision
DOT approval to enter New Starts Program:	Pending	Pending Policy Decision
RFP release for Streetcar design:	Pending	Pending Policy Decision
CRAVE study publication:	Pending	Pending Policy Decision
DOT Project Mgmt. Consultant assigned:	Completed	Pending Policy Decision
Project Final Design/Engineering:	TBD	Pending Policy Decision
Project Construction:	TBD	Pending Policy Decision
Project Completion/Operations Begin:	TBD	Pending Policy Decision

REPORT
3

Grand Jury Analysis of Preferred Transit Extension Options for Anaheim and Fullerton:

(Metrics: General Information, relationship with OCTA, advocates & opponents and economic goals.)

	<u>Anaheim (Anaheim Rapid Connection)</u>	<u>Fullerton (No Policy Decision)</u>
<u>General Information:</u>	<u>General Information:</u>	<u>General Information:</u>
Meets M2S Criteria for Metrolink Transit Feed:	Yes	Yes
Regional Transportation Center Linkage:	ARTIC (AMTRAK/Metrolink)	AMTRAK/Metrolink (2 Corridors)
Current Project Investment by City:	\$3,603M	Not Yet
Est. cost per mile double track:	\$100M	Estimate: \$70M if light rail used
Increases mobility and flexibility of Labor Pool:	North County Regional Impact	North County Regional Impact
<u>Relationship with OCTA:</u>	<u>Relationship with OCTA:</u>	<u>Relationship with OCTA:</u>
Initial OCTA funded for "Go Local" Program:	Go Local Grant for Transit Master Plan Study	SCAG Grant for College Connector Study
Initial Cooperative Agreement with OCTA:	C-8-1156 dtd. 9/16/2015 as Amended	Not Yet
OCTA Board approves Proj. Mgmt & Ownership:	OCTA approves 6/24/14 Light Rail selection	Not Yet
Add. Coop. Agreements with OCTA:	C-1-2448 dtd. 3/14/2011 as Amended	Not Yet
Add. Coop. Agreements with OCTA:	C-1-3115 dtd. 1/4/2012 as Amended	Not Yet
MOU w/OCTA for Proj. Compl. & Ops. Funding:	Pending	Not Yet
<u>Advocates:</u>	<u>Advocates:</u>	<u>Advocates:</u>
Mayor	No	Pending Policy Decision
City Council	Oct. 2012 By Majority Vote	Majority
Majority	Majority OCTA Board	Early OCTA Support for Study
Light Rail knowledgeable City Staff	Very	Yes
Theme Parks & Sports Venues	Yes	Connections to other Cities
Destination and Business Hotels	Yes	Yes but local
Newspaper/OpEd/Blog:	Light rail project needs support	Light rail is a good solution
Other Advocates:	ATID (\$1.3M for Eviron. Study)	\$3.5M via OCTA Pending
<u>Opponents:</u>	<u>Opponents:</u>	<u>Opponents:</u>
Newspaper/OpEd/Blog:	Articles: "Buses more cost effective"	Some Community Opposition
Individuals:	Interview: Some Community Opposition	Interview: Some Community Opposition
<u>Economic Goals:</u>	<u>Economic Goals:</u>	<u>Economic Goals:</u>
Although these economic goals may not be all inclusive, based upon the Return on Investment expectations from Report Investigation, they represent a reasonable order of priority for each city.	To increase Tourist Trade & Tax Base.	To promote College connectivity.
	To increase ROW Adjacent Property Values.	To increase Transit Use to Los Angeles.
	To inhance downtown image.	To increase Tourist Trade & Tax Base.
	To supt. Business & Urban Development.	To increase Downtown Business Developm't.
	To increase Transit Use via ARTIC.	To supt. Business Development.

Appendix C: Continuity References

Entity Responding	Title	Mail Stop	Street Address	City	Postal Code	Phone Number
OCTA	CEO	PO Box 14184	550 South Main St.	Orange	928623-1584	714.560.6282
Santa Ana	City Manager	N/A	20 Civic Center Plaza	Santa Ana	92702	714.647.5400
Garden Grove	City Manager	N/A	11222 Acacia Parkway	Garden Grove	92840	714.741.5000
Anaheim	City Manager	N/A	200 S. Anaheim Blvd.	Anaheim	92805	714.765.4311
Fullerton	City Manager	N/A	3003 W. Commonwealth Ave.	Fullerton	92832	714.738.6300

REPORT
3

FOSTERING A BETTER FOSTER CARE SYSTEM



GRAND JURY 2015-2016

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EXECUTIVE SUMMARY

Children and Family Services (CFS) is one of four divisions of the County of Orange, Social Services Agency. CFS provides services designed to protect children from further abuse and neglect, and to ensure their safety, well-being and permanence. The agency places children into protective custody when they cannot be safe in their homes.

In October, 2015, the California Legislature enacted AB403 (Stone), the Continuum of Care Reform Act, which will have a significant impact on current foster care practices. AB403 is a comprehensive effort to make sure that all youth in foster care have their physical, emotional and mental health needs met; that they have the opportunity to grow up in supportive and permanent homes; and that they have the chance to become successful adults. The 2015-2016 Grand Jury investigated the commitment and readiness of Children and Family Services to implement this challenging legislation. CFS has been very successful enabling children in protective custody to maintain family ties by placing as many as possible with relatives, and providing support for the families who become caregivers. However, the Grand Jury also found CFS has failed to provide safe, nurturing and permanent homes for those children who are considered “hard to place.” This particularly vulnerable segment includes teens and children with serious medical and psychological needs. These vulnerable children often live in long term foster care with little prospect of adoption, reunification with parents or placement with relatives. CFS has also been unsuccessful finding homes to accommodate large sibling sets, so these children experience the trauma of being removed from parents and the additional pain and loss of being separated from their siblings.

The County has a severe shortage of foster homes, particularly homes for “hard to place” children. Employees of CFS at all levels acknowledged this shortage to the Grand Jury. CFS Self-Assessment reports and System Improvement Plans dating back to at least 2008 include the agency goal to increase and retain foster families, particularly those willing and able to accept teens, sibling sets, and children with serious medical and psychological needs. However the Grand Jury concluded that the efforts of CFS in this regard have been insufficient and unsuccessful. Furthermore, the shortage of available homes causes the County to rely on foster parents who may not be supportive or nurturing, and on private Foster Family Agencies (FFAs) with limited data about the cost or quality of care these FFAs provide. The result is that traumatized children spend months in shelters awaiting placement, endure multiple placements and/or separation from their siblings, thus suffering further psychological damage.

The 2015-2016 Grand Jury strongly recommends that Orange County Social Services Agency Children and Family Services direct resources to attract and retain trained, supportive, and committed foster families who will provide love and stability to all children in foster care, including the “hard to place.” The Grand Jury further recommends that CFS clearly define its purpose in developing contracts with Foster Family Agencies (FFAs), restrict those contracts to

agencies providing unique services that the County cannot deliver, and carefully monitor these private agencies.

BACKGROUND

The Continuum of Care Act, AB403

In order to improve quality of life for dependent youth, the California Legislature passed AB403, Foster Youth: Continuum of Care Reform in October, 2015. The goal of this well-intentioned legislation is to place youth, already traumatized by removal from their families and the conditions that prompted that removal, into stable and supportive homes as quickly as possible. Among its many provisions, the bill strengthens training, qualifications and support for foster families; updates the assessment process so that children are placed in the “right home” initially with services tailored to meet their unique needs; and transitions children from congregate care, often called group homes, to home based family care.

The legislation aims to reduce and minimize that trauma by improving California’s child welfare and foster system and its outcomes for emancipated youth. Recognizing that children who live in congregate care settings are more likely to suffer from negative short and long-term outcomes, the law transforms group homes into Short Term Residential Treatment Centers (STRTCs) that will provide up to six months of specialized and intensive treatment for youth whose needs cannot be safely met in a family setting. If, based on a reexamination of needs, a child requires continued treatment beyond that period, a high level County official must provide authorization. Youth currently living in group homes must be transitioned into home based family care.

Among its other provisions AB403 mandates a comprehensive initial assessment for all children removed from their homes so that the first placement best meets the unique needs of the child. Furthermore, the legislation regards the foster parents as full partners on the child and family care team and requires that a foster parent act as a “reasonable and prudent parent, and provides a family setting that promotes normal childhood experiences that serve the need of the child.” (AB403, October 2015)

AB403 has many challenging and controversial aspects. It “streamlines” training and certification for both foster and adoptive families. Many youth advocates and Children and Family Services employees are concerned that the abbreviated training will leave caregivers overwhelmed and underprepared. Additionally, the law effectively disallows congregate care as a placement option. Some CFS employees stated that congregate care is sometimes a good option for teens, and they lamented the loss of some group homes, such as Boys Town. It will take several years of implementation to determine if the legislature acted wisely with regard to training and group home placement.

Prior Orange County Grand Jury Reports

A 1999-2000 Grand Jury report entitled *Orange County is No Camelot for Emancipated Youth* examined the outcomes for Orange County youth who had emancipated from the foster care system and reviewed programs serving foster youth. The 2006-2007 Grand Jury wrote an update to the report entitled *Pre and Post Emancipated Youth: Is Camelot Still a Dream?* The report found that the County had few data sources to track emancipated youth; that youth needed multiple opportunities to practice Independent Living Skills; and that the County had implemented programs serving this population. California law now allows 18 to 21 year old youth to remain in foster care if they choose and provides an array of services that promote successful transitions.

The 2006-2007 Grand Jury also wrote a report entitled *Orangewood Children's Home: Overstaffed and Underutilized?* which found that, despite the steep decline in the average population of the facility, staffing remained the same. The report recommended that the County examine repurposing Orangewood. As of February 2016, Orangewood Children's Home remains underutilized with an average daily populations of 68 but a capacity of about 130.

During the same term, the Grand Jury wrote another report entitled *Where Are Orange County's Foster Children?* Of particular interest to the 2015-2016 Grand Jury was that the report asserted that 26% of the County's foster children lived outside of Orange County, often in homes in the Inland Empire. The report highlighted the burden that out of County placement creates for children, biological parents working to reunify with their children, and social workers whose caseloads were not reduced to allow for hours spent on the freeway. As early as 2006, the focus of Child Welfare had shifted from congregate care (group homes) to family homes. Ten years later, 20% of Orange County's foster children are placed out of the County and Orange County is still critically in need of foster homes.

SCOPE OF REPORT

This study focuses on the recruitment efforts of Children and Family Services in the past decade and on the immediate need of the County to attract and retain caring families so that all foster children benefit from the intent of AB403. The primary emphasis of this investigation is the particularly vulnerable group of children: teens, children with serious medical and psychological needs, and sibling sets. The investigation also explores the relationship between Children and Family Services and private Foster Family Agencies (FFAs).

METHODOLOGY

1. The Grand Jury conducted more than forty interviews with individuals including administrators, supervisors and social workers currently employed by the Orange County Social Services Agency, Children and Family Services; County foster parents; volunteers and employees of various agencies that advocate for foster youth; and administrators from Foster Family Agencies contracted by the County.
2. The Grand Jury reviewed documents prepared by the Orange County Social Services Agency Children and Family Services; AB403 and other legislation pertaining to foster youth; numerous articles; and studies.
3. The Grand Jury visited Juvenile Hall, Orangewood Children and Family Center, Samuelli Academy and several Foster Family Agencies.
4. The Grand Jury attended several training and support sessions for foster parents.

INVESTIGATION AND ANALYSIS

“The psychological stigma associated with being labeled an ‘orphan,’ ‘foster kid.’ ‘ward of the court ’or ‘at risk youth’ can play havoc with one’s self-esteem. The terms used to describe our lowly status say that we are less than other kids: less fortunate, less worthy, less good, less capable, less important, less lovable...less almost everything.

Many of us are so distressed by what happened at home or in the system that we develop behavioral disorders, emotional problems or other mental health issues that compromise our ability to overcome the past and adjust to the future. Still others of us feel ashamed of our youth and spend a lifetime hiding from the past.

At best, the experience of being separated from family and placed in the care of strangers leaves a bloody scab on the psyche that may never quite heal.”

Walt Brown, PhD June 3, 2013

Current Placement Data (See Figure 1)

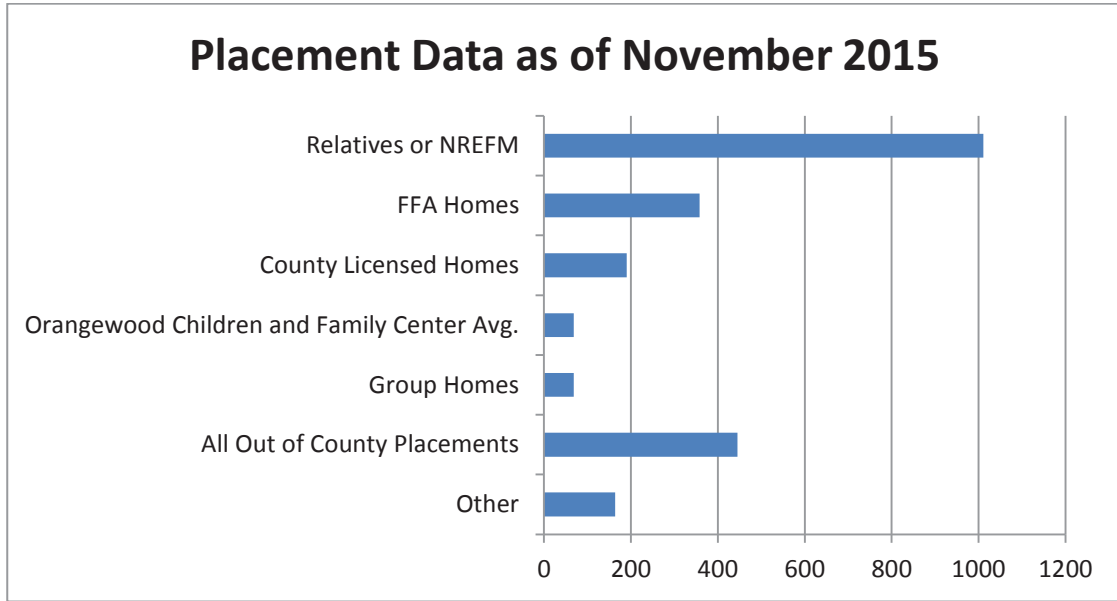


Figure 1

Priority Placement with Relatives or Non-Related Extended Family Members

Currently, approximately 2,300 children who have been removed from their biological parents are in foster care in Orange County with those numbers anticipated to increase over the next three years. Forty five percent (45%) of these children are placed with relatives, or non-related extended family members (NREFMs) such as former neighbors or teachers. Children and Family Services has prioritized this type of placement. Every CFS staff member, every state agency representative, and every foster parent that the Grand Jury interviewed clearly understood this goal and the policies and procedures that ensured its implementation. The agency’s priority of placing children with extended family is clear and unambiguous, and the agency has been widely recognized for its efforts. During interviews with the Grand Jury, a few social workers and advocates for children expressed concern about the quality and suitability of some relative caregivers, but they are hopeful that the new Resource Family Approval Process would elevate the quality of these homes.

Orangewood Children and Family Center

Children and Family Services (CFS) has long relied on the resources of Orangewood Children and Family Center (formerly called Orangewood Children’s Home) to care for children awaiting placement. The average length of stay in this facility is 31 days. However, some children remain

at Orangewood for six months or more because they are considered “hard to place,” and homes for this population are scarce. AB403 limits the use of emergency shelters such as Orangewood Children and Family Center to 72 hours after children have been removed from their homes. Fortunately, the Board of Supervisors and agency managers effectively lobbied the legislature to allow children to remain in Orangewood for ten days. However, ten days is a very short time to assess the needs of dependent youth and place them with families that meet their individual circumstances. The *OC Register* reported that a former member of the Board of Supervisors and current high level executive of the Orange County Alliance for Children and Families stated that the ten day limit at Orangewood “will be a significant challenge” for the Social Services Agency (Walker, January 10, 2016)

County Home, Foster Family Agency, and Group Home Placement

Priority placement with relatives is not always viable. Between 25 -35% of dependent children live in Foster Family Agency (FFA) homes. These private agencies are licensed and under County contract to certify foster homes. Only about 10% of dependent children are placed in homes licensed by the County. The County has an estimated 400 foster homes, but only 140 of these homes currently accept placements. Children and Family Services staff members suggest anecdotal reasons to explain why almost two thirds of its licensed homes do not accept children: some foster parents have added adopted or biological children to their family and are adjusting to the new situation, others have had changes in employment that limit their ability to care for foster children, and some long time foster parents have aged and are no longer able to assume the responsibilities of fostering. However, CFS keeps no data on the expressed reasons licensed families do not accept children.

The most current estimate of children living in congregate care (group homes) is 7 -15%. This statistic varies because of the population fluctuation at Orangewood Children and Family Center. Some of these children have recently been removed from their parents and others are youth who have been unsuccessful in one placement and are awaiting another. Most of the youth placed in other congregate care facilities are teens. The County is required by AB403 to find family homes for this population.

Twenty percent (20%) of Orange County foster youth are placed out of the County. The Grand Jury was advised that sibling sets are sometimes placed in counties where housing is less expensive than in Orange County. Other dependent youth are placed with relatives who live out of County. Some FFAs contracted by the County also have homes in neighboring counties.

CFS reports that children, on average, return to their parents within 12 months of being removed from their home. This reunification time is longer than both the California median time of 9 months and the National Standard of 5 months. (SIP, 2014-2019) On average, dependent youth

experience two placements per year. However, for youth, predominantly teens and preteens, who are in foster care for 24 months or longer, the statistics are alarming. A 2014 Orange County Self-Assessment Report states that 64% of children in foster care for two years or longer experience three or more placements per year. (See Figure 3)

Shortage of Foster Homes

In Orange County, the Social Services Agency Children and Family Services (CFS) acknowledged a critical shortage of foster homes even prior to passage of AB403, Continuum of Care Reform. In order to comply with the requirements of the new law, CFS will need to license between 100 and 150 quality homes by January 2017. Furthermore, the law acknowledges that many foster youth have endured psychological trauma and frequently have behavioral problems and mental health needs that require placement in therapeutic homes. Other children have serious medical needs. According to the *OC Register*, a former Executive Director of the Children's Services Orange County and leader of the Orangewood Foundation stated, "You're really talking about more of a professional parent." (Walker, January 10, 2016)

Currently Orange County has only 20 homes identified as Multi- Dimensional Treatment Foster homes and no Intensive Therapeutic Foster Care homes. Not only does Orange County need to recruit new foster parents, they need to recruit parents trained, certified and willing to nurture children with severe behavioral, emotional and psychological challenges. The 2015 Foster and Relative Caregiver Recruitment, Retention and Support County Plan states that approximately 100 new homes are licensed annually by the County, but approximately the same number leave the pool, thereby negating any potential increase in placement homes. (November, 2015)

Quality Families versus Adequate Placement

AB403 does more than require that foster children be moved from group homes to family settings. It is the intent of the Legislature to ensure quality care for children by attracting and retaining loving caregivers skilled at meeting the needs of the children in their care who serve as critical members of the child's team. The law requires that each child receives a thorough assessment of needs and is placed in a home that serves those unique needs and provides stability and permanence when reunification is not possible. Given the shortage of County homes, the mandates are daunting. When asked about the quality of foster homes currently taking children, most County social workers rated 50 -60% as "excellent" or "good," 30- 40% as "adequate," and 10 -20% as "poor." Social workers often added that some foster parents were "good" for certain children but "poor" for others. These social workers defined an "adequate" home as one which provided children with room and board, but failed to make the children in their care a part of the family. Several social workers stated they began their career as idealists who believed foster parents were dedicated to children, but they now believe some are merely in it for the money.

Interviews with volunteers and employees of children’s advocacy organizations painted an even bleaker picture. They described homes where children were denied entry into the kitchen and to food available to other family members; they described foster parents who refused to allow children to participate in extra-curricular activities because they were unwilling to provide transportation; they described foster parents who frequently told the children in their care how “expensive” they were; they told the Grand Jury about children left behind when the family vacationed. One advocate expressed concern for a child who slept in a top bunk. During the heat of the summer, the child asked her foster mother for a fan, but her request was denied because the parent was unwilling to pay the cost of electricity. Several social workers and advocates described youth who had been in up to 12 placements while in care. Even current caregivers shared concerns about other foster parents they had encountered. They stated that they believe some foster parents accepted multiple teens in their home because the pay is better for hard to place youth. Grand Jurors asked why the County would continue to place children with adults who received repeated formal and informal complaints. Most staff answered that the County needs beds. While it is true that Grand Jurors also heard about loving, caring homes and interviewed foster parents dedicated to the children in their care, it is unacceptable for any children already traumatized by circumstances that led to their removal from their biological families, to endure further neglect and abuse in poor quality, uncaring homes, or those deemed “adequate” by a large contingent of social workers.

The Most Vulnerable

AB403 acknowledges that children in foster care are affected by trauma as a result of being separated from their families and the situations that prompted that separation. The outcomes for youth who emancipate from the foster care system are bleak. Foster youth are likely to suffer a variety of negative outcomes including low academic attainment, involvement in the criminal justice system, alcohol and drug dependency, unemployment, early pregnancy and Post Traumatic Stress Disorder (See Figure 2). The 19th Annual Report on the Condition of Children in Orange County states that, as a result of displacement from family and multiple placements, foster youth often perform below grade level, earn lower grades, experience higher rates of absenteeism and have more disciplinary problems than other pupils in the general population. While 11% of the general California school-age population is enrolled in special education programs, 27% of foster youth receive special education services. Forty five percent (45%) of foster youth earn a high school diploma. (Conditions, 2013) Of those, fewer than 2% graduate from college.

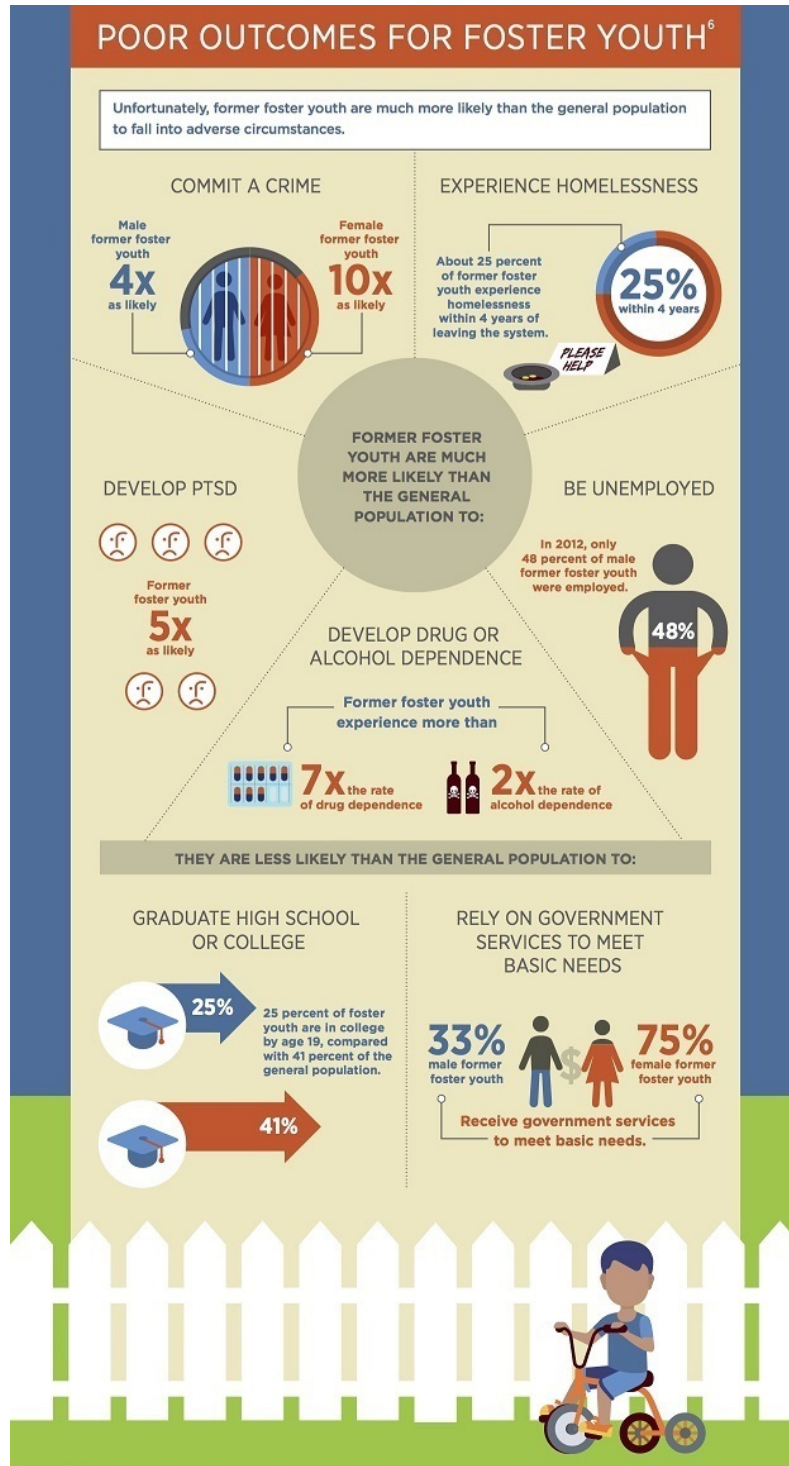


Figure 2: Poor Outcomes for Foster Youth (Foster Club, 2015)

Often the homes described by social workers as “excellent” are those in which the foster parents intend to become adoptive parents. Babies and young children find homes with these families.

Most course trainers echo that sentiment. Many social workers acknowledge that the most troubled youth who have been in foster care for long periods, are increasingly unlikely to be adopted. They have no relatives to provide suitable homes and often bounce from placement to placement in “adequate” to “poor” homes with an open bed.

The number of Orange County youth in care for 24 months or longer, 727, is substantial. This population represents one third of the population of dependent children. Currently many social workers assert that adolescents in long term foster care develop behavioral problems, and the more severe the problems, the more likely youth are to be placed in “poor” rated families, and the more likely they are to experience multiple placements. Each placement change means that they may also change schools, therapists, doctors and other caregivers. They lose their personal belongings and their friends. It is not uncommon for teens to attend six or more middle and high schools, falling behind academically with each move. They are often assigned to special education. Every move creates further trauma and contributes to troubled behaviors and poor academic outcomes.

A 2006 study found a relationship between placement and the existence and severity of behavioral problems. (Leathers) A 2007 study found that children who experience multiple placements in foster care are more likely to engage in delinquency and become involved with the criminal justice system than youth in the general population. (Lewis, et al.) In fact, the Grand Jury learned that 52 youth are currently designated as dual jurisdiction. That is, they are both dependent foster children and on probation. Some became involved with the criminal justice system while in foster care. Finding placements for these youth is extremely challenging, and some are forced to remain in Juvenile Hall after they complete their sentences because there is no available placement.

Many social workers and administrators from Children and Family Services (CFS) interviewed by the Grand Jury routinely stated that foster youth fail placement due to their behavior. A large portion of staff interviewed at each level of the agency spoke of youth, particularly teens, whose behavior is bizarre, destructive, and defiant. Many indicated a belief that nobody wants these kids. Many youth run away from placement, putting themselves in danger. It is not uncommon for these teens to briefly return to Orangewood for a shower and a meal, and then run again. They are emboldened by peers who also go AWOL. Vulnerable youth hear that they have failed placement again, when, according to many social workers and child advocates, it is the system and the society that is failing the children. California law and agency policy mandate that children be placed in their home school, in the least restrictive environment, and in homes that are best suited to their needs. However, the reality is that the County has few good options available for adolescents and other children who are not “going home.” Published statistics reveal average placement numbers, average reunification rates, average statistics on in care

maltreatment, but they do not adequately capture the dire circumstances of those in long term care. (See Figure 3)

Placement Instability for those at least 24 months in care, by Area (Instability is ≥ 3 placements)

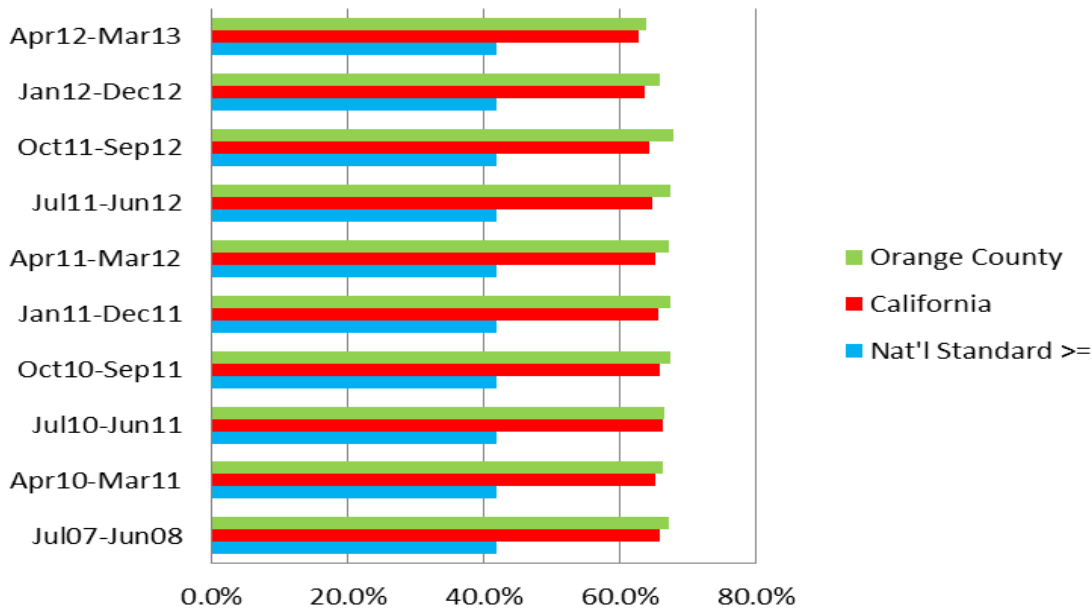


Figure 3

Another defenseless group is children with severe medical needs, both physical and psychological. There are 91 children currently designated as medically fragile. The number of dependent youth with serious psychological problems is growing, with estimates ranging from 35 -50% of the total dependent population. During interviews, some staff told the Grand Jury that statistics are difficult to obtain because many youth are not routinely psychologically assessed and are not seeing therapists. There are very few homes for these children and very few adequately trained parents in the County to meet the growing need.

Large sibling sets also present a significant challenge for Children and Family Services (CFS). There are currently 199 sibling sets of three or more in placement, 148 of whom are placed in Orange County. The agency’s efforts in finding family members for sibling sets have been effective. When children are placed with relatives, 68% percent live with all of their siblings and 86% live with some of them. However, children placed in County foster homes do not fare as well. Only 47% are placed with all of their siblings and 72% are placed with some of their siblings. Thirty eight percent (38%) of children placed in FFA homes are placed with all of their siblings and 76% are placed with some of their siblings (See Figure 4). (Webster) Studies emphasize the importance of sibling relationships for dependent children and suggest that the maintenance of sibling ties “can nurture a sense of stability and continuity in the lives of foster youth.” (Herrick and Piccus, 2005) Because children who have been neglected and abused by their caregivers have especially strong ties to one another, separating them may cause additional

trauma. Yet without available homes and systems to support families willing to take multiple children, County children may endure this additional trauma of separation. Thirty of the County’s 199 large sibling sets are split between Orange and neighboring counties, making visitations difficult for the children and for their social workers.

Placements with Siblings

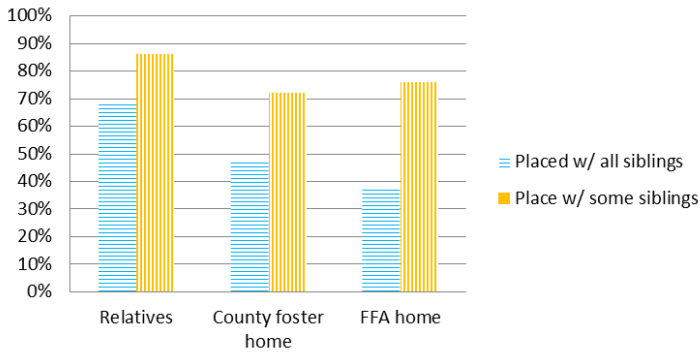


Figure 4

Underutilized Resources

The County has some promising resources for its hard to place populations, although developing these resources may take some “out of the box” thinking. The first is Samueli Academy, a public charter high school dedicated to providing a “transformational learning environment” for foster youth and those in low-income communities. The academy offers its pupils consistency, stability, and a supportive community. In the fall of 2015, Grand Jurors attended Back to School Night at the Academy, met with dedicated teachers, administrators, and pupils who gave glowing evaluations of their educational opportunities. The Academy has staff dedicated to coordinating appointments and court dates for foster children, monitoring homework and providing tutoring.

The Academy was opened in August, 2013 as a result of the efforts of philanthropists Susan Samueli and Sandi Jackson and members of the Board of Directors of Orangewood Children’s Foundation. However despite the fact that the Academy was created to provide state of the art education for foster teens and other disadvantaged youth, the Grand Jury learned that only a disappointing 17 of the 375 pupil population is comprised of dependent youth for the academic year 2015-2016. Considering that the population of dependent preteens and teens in Orange County is about 700, the paltry number of foster youth attending the school is even more dismal. (Webster) Some school and County staff stated that foster parents are unwilling to transport pupils to the school. The school was conceived with the idea of providing dormitory living with a wide range of support systems for foster youth. However, the dormitory construction was halted because of the pending provisions of AB403 regarding congregate care. The County is currently lobbying for an exemption, and, as of this writing, remains very confident that the facility will be approved as a 5/2 home. This designation means that foster youth will live in the

dormitory during the school week, and go “home” to foster parents on the weekend. In the meantime, the County has failed to adequately provide transportation to enable foster youth to attend the Academy. During interviews, the Grand Jury learned that CFS has not proactively provided outreach to middle school pupils transitioning to high school, to relative caregivers, or to foster parents. An Academy Board Member told the Grand Jury that the board had hosted a few “lunch and learn” events for County social workers, but the events were poorly attended. Since foster pupils who express a commitment to their education are automatically admitted to the Academy, while other applicants are admitted through a lottery, the County has an opportunity to proactively recruit and enroll teens for the 2016-2017 academic school year, provide transportation for them and begin identifying a pool of “weekend” foster parents.

Another possible placement resource is Orangewood Children and Family Center, a County owned and operated facility that serves as an emergency shelter for abused and neglected children. The facility includes six large residence cottages (and several others that serve ancillary functions), a school comprised of several classrooms, a gymnasium/recreation center, a playground, a swimming pool, a visitation area, a library, and a cafeteria. The facility has beds for more than 130 children, but its current average population is 68. This number will decrease since AB403 limits emergency placement at Orangewood to ten days. It is time to consider repurposing part of this facility. With some creative thinking and remodeling, the cottages at Orangewood could become individual “homes” for large sibling sets, medically fragile youth and the foster parents willing to care for them. Each repurposed cottage might house six children (the maximum allowed for home based care) and their foster parents. The idea that social services agencies provide housing for foster parents is not without precedence. The Grand Jury learned of examples of this practice in other states. Additionally Orangewood could serve as temporary dormitory living for Samuelli Academy until the proposed dorms on campus are constructed. Finally, a new animal shelter is reportedly in the planning phases for a site in Tustin, which would free up the County owned property for foster care homes with the advantage that the resources of Orangewood are less than a block away.

Quality Parenting Initiative

The Quality Parenting Initiative (QPI) is modeled after a project of the same name in Florida. It began statewide in 2009 as a collaborative effort with the California Department of Social Services and the County Welfare Directors Association. The intent of QPI is to strengthen efforts on a statewide basis for the recruitment and retention of quality caregivers. The initiative defines a quality caregiver as “one who provides the foster child food, shelter, medical care, education, safety, support, encouragement, reassurance, self-esteem, self-worth, security, structure and love.” When appropriate, the caregiver mentors the biological parent. The assumption underlying QPI is that the Foster Parent “brand” is damaged, and the term “foster parent” has negative connotations. The initiative recognizes that the success of the child welfare system rests on

improving the image and quality of foster parents, and that doing so leads to successful recruitment and retention. QPI makes foster parents an integral, equal and respected partner on the child's team and recognizes that quality foster parents are a valuable asset for recruiting and training new foster parents. QPI provides foster parents with training that clearly articulates expectations and realistically informs potential foster parents of the challenges presented by traumatized youth.

The Grand Jury learned that the Orange County Social Services Agency Children and Family Services has been part of the pilot program to implement the Quality Parenting Initiative in the state for more than four years. CFS told the Grand Jury that staff had been assigned to implement the initiative and had attended QPI forums with Social Workers, Foster Families and CASA (Court Appointed Special Advocates) volunteers. CFS provided the Grand Jury with dates when the agency had held town hall meetings and workshops to educate staff about QPI. The Grand Jury was advised that CFS distributed QPI literature widely throughout the agency. However, in subsequent interviews with social workers, the Grand Jury learned that most staff members had never heard of QPI, never received training in its implementation, and, most disturbing, did not observe any change in the quality of foster parents.

In addition, the Grand Jury was repeatedly told that current foster parents were the best recruiters of new foster parents, and this concept is a strong component of QPI. Yet, foster parents are not involved in any formal recruitment efforts. The Grand Jury could not identify a single effort to "rebrand" foster parents, although most case workers did indicate that they involve foster parents in decision making meetings. Some senior level staff from children's advocacy organizations and state agencies involved in the implementation of QPI stated that the Orange County Children and Family Services writes promising policies and procedures, but fails to provide adequate resources to implement them. Some children's advocates questioned the County's commitment to providing quality homes for foster youth and said that the system promotes mediocrity and actually makes it more difficult to be "good" than to be "adequate." Further, they told the Grand Jury that the County lacks expertise in recruiting and has failed to develop an understanding of the types of support systems necessary to retain quality foster parents.

Most foster parents interviewed by the Grand Jury expressed appreciation for the mentoring they had received from more experienced parents and were willing to assist others. Two parents had attended a QPI meeting hosted by the staff liaison; they were particularly interested in the clarification of legal issues surrounding fostering and adoption. Both volunteered to serve on a committee as foster/adoptive parent representatives. They have not been contacted about this committee in more than a year. The Grand Jury learned that a QPI conference, intended to provide education, support and networking for foster parents was held in Ventura in September 2015. Not one Orange County foster parent attended the conference. The Grand Jury was advised

by some agency employees that foster parents did not attend because the County did not make funds available to them.

County Recruitment and Retention Efforts

Limited Resources and Limited Recruitment

Children and Family Services (CFS) has a Recruitment, Licensing and Development unit, but until early 2016, only three social workers and two event specialists were assigned to this task. The unit is charged not only with recruitment, but also with developing orientation and training for foster families. Clearly, staff resources were inadequate for the challenging tasks. In early 2016, the County added a significant number of additional social workers and two supervisors to this team. However, in addition to the critical tasks of recruitment, this unit is also charged with revamping the training program to implement Resource Family Approval (RFA).

The Grand Jury interviewed members of this unit in the fall of 2015. The Grand Jury was unable to ascertain the existence of a strategic plan for recruitment that contained specific goals. When asked to describe recruitment activities, almost all employees interviewed stated that they staffed booths at several local community events each month. The Grand Jury attended some community events and noted tables staffed by social workers passing out brochures about adoption and fostering. Some caseworkers expressed a need for ethnic foster families and informed the Grand Jury of recruitment efforts during Black History month, but the County had no presence at the Tet festival in Fountain Valley.

Social workers and CFS managers frequently spoke of the County's collaboration with Faith in Motion, a faith-based community whose stated primary mission is to find loving foster and adoptive families within the faith community. However, CFS has no data showing whether the collaboration between CFS and Faith in Motion has resulted in recruitment of foster families. The Faith in Motion website lists ten ways that congregants can help in this effort. Number one is to pray, number two is to donate items to foster families, and number three is to assist in the photography of children hoping to be adopted. Only the final two items on the list ask congregants to consider becoming foster or adoptive parents. At this time, Faith in Motion is integral to the unit's efforts to provide support for foster families and to raise awareness for the need of caregivers and the children in their homes. Almost all interviewees stressed the importance of building a strong relationship with the local congregations and anticipate that, over time, this relationship will result in a strong community of foster parents. In February, a local congregation hosted a "matching event" designed to introduce members of the faith based community to children in need of homes. CFS social workers intend to hold two or three such events annually. Many unit staff members were overwhelmed with responsibilities and cited lack of time, lack of personnel, and lack of funding to explain the limited recruitment efforts.

While the vast majority of individuals interviewed asserted that current foster families are the best recruiters of new families, most of the CFS staff interviewed, at each level, acknowledge that the County seldom utilizes its caregivers for this task. Most social workers cite a lack of available funding.

Some members of the Resource Family Recruitment, Licensing and Development unit stated that, to their knowledge, the County maintains no data on the success of its efforts, even though it possesses a data collection system called Efforts to Outcomes. CFS affirmed that the County does not currently use Efforts to Outcomes and did not keep data on recruitment/retention efforts. The current annual turnover rate of licensed foster parents is 25%.

The Grand Jury found little evidence of efforts to recruit families for “hard to place” populations in spite of the fact that the County has reiterated that need for a decade. One staff member told the Grand Jury of recruitment efforts for the Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) population. Another social worker organized an event titled Mission Possible aimed at finding homes for teens, and another stated that the recruitment unit once had a table at a local hospital in an effort to recruit foster parents with medical expertise. The Grand Jury reviewed a 2009 County Self-Assessment Report in which CFS acknowledges the need to increase and retain foster families and wrote that from 2009 to 2012 the Orange County Social Services Agency Children and Family Services Division would have as a focus to “Increase the number of foster and adoptive families that will care for foster youth who are large sibling sets, older children, minors with children, youth who are preparing to emancipate and children with special medical needs.” (County Self-Assessment, 2009) That same year the Systems Improvement Plan highlighted areas that need improvement. Among its recommendations was “Need to recruit and develop foster and adoptive resource families for siblings, older children, minor parents, special medical needs and to meet the cultural and racial needs of our children.” (SIP, 2009) More recently, a 2014 Self-Assessment report reiterated that same recommendation to increase placement resources for sibling sets, older youth, and children with special needs. (County Self-Assessment, 2014) In spite of these repeated assertion, there is no evidence that the County allocated adequate resources for the task or made this need a priority.

Foster Parents: Valued Partners or “Cheap Motel?”

An executive at the California Department of Children and Family Services stated that recruiting 100 to 150 homes will be a big lift for Orange County, but a bigger concern is a conversion strategy that “hooks” and engages families. The Grand Jury learned that efforts to retain and support foster families in the county are minimal. Only one social worker is assigned as a liaison to all of the County’s families. There is no back up social worker trained to assume this job in the event the assigned individual is unavailable. The current social worker carries a Blackberry when

out of the office for conferences or sick days. The Grand Jury did not talk to a single foster parent who did not know this tireless staff member. The liaison is on the board of the Foster Family Alliance which provides canned foods, clothing and equipment donations for families. They also host four annual events. Among the four are a Spring Festival to recognize social workers and a dog show. The liaison also holds a quarterly meeting of Club Mom and Dad, which attracts about 30 participants, and occasional support groups. The Grand Jury learned that a few foster parents host their own mentoring and/or support groups without remuneration. They stated that there is a critical need for additional mentoring, but the County does not allocate funds to support this effort.

The Grand Jury had informal discussions with more than 20 foster/adoptive parents. Most stated that the Trauma Informed Training they receive has been professional and vital to understanding the needs of children who had experienced abuse and neglect. The Grand Jury attended several course sessions and noted that the classes were co-taught by a County social worker and foster parent who could provide practical suggestions for using the theories presented.

Foster parents interviewed generally have positive interactions with their assigned social workers, but many stated that these caseworkers are so overworked that it is difficult to get to spend quality time with them. Most stated that assigned social workers return calls and answer emails and never miss a monthly visit, however the meetings are often perfunctory. Some foster parents said that social workers sometimes visit children at school, so that the caregivers do not see a social worker for two months or longer. They also reported that they and the children in their care suffer from the constant staff turnover in the agency. Some reported having multiple caseworkers. Foster parents hoping to adopt the children in their homes are especially frustrated by the delays that result while new social workers become familiar with cases.

Foster parents understand and support the County's determined effort to reunify children with their biological families. However, most expressed anger and frustration at the lack of regard the agency has for them. One foster father said that he is no more than a "cheap motel" to the County. Of particular concern is the scheduling of mandated visits between children and their biological parents who have a legal right to spend six or more hours each week with their children. Foster/adoptive parents stated that the visitation schedules did not take into consideration the needs of the children, and that they changed constantly. One foster mother with a two- year old spoke of having to wake her child from naps. Another, who is fostering two sisters, had to pull the girls from dance lessons because the biological parent twice requested schedule changes that interfered with the classes. Some foster parents also said that monitors are present during these visits, but they are seldom consistent. These constant new faces are extremely upsetting to young children. When foster parents ask for consideration about scheduling, they are ignored or considered uncooperative. A number of parents pointed out that their training courses focused on the critical job of the caregiver to help abused and neglected

children develop trust. Trust, they learned, is a result of consistent behavior, established routines and familiarity. Many foster/adoptive parents noted the disconnect between the curriculum and the realities of working with Children and Family Services.

As a result of their training, parents are aware of the challenges of the children in their homes, but many stated that the County did not provide support to manage behavioral and mental health challenges. In addition to consideration for scheduling and behavioral intervention support, foster parents want assistance with visitations and frequent appointments with physicians and therapists. Foster parents, especially those with other children in the home, are overwhelmed with the responsibilities and want assigned social workers to transport and monitor these appointments.

Few foster/adoptive families believe that CFS regards them as integral, equal and respected partners on the dependent child's team. They frequently told the Grand Jury that they are denied educational, medical and psychological information that is crucial to making decisions about parental responsibilities such as discipline and school placement.

Another frequent complaint regards agency communication. For example, during a break in a course attended by foster/adoptive parents, one father stood up to inform the others about his fruitless attempts to get information about the new Resource Family Approval training. He contacted an appropriate staff member, but that individual was no longer working in the job capacity. He left multiple messages with a newly assigned staff member, but had received no response in a week. He acknowledged that the changes required by the new legislation are challenging for the agency, but he could not comprehend why someone would not return his call if only to say that a decision is pending.

Many foster parents agree that the social services system is better suited to "adequate" or "poor" parents who do not care about the development of the children in their care. "Good" parents are the squeaky wheels to overworked staff. One foster mother of a troubled teen told the Grand Jury that she had spent more than \$3000 on therapy for her youth because the County had not provided needed mental health care. A group of foster parents wishing to adopt children in their care told the Grand Jury that their original intention when they attended the County orientation program was to adopt two or three children. They bonded with and loved the children in their care, and had hoped to expand their families while doing something positive for the community of abused and neglected children. However, they are all disillusioned by the lack of regard they had experienced. They recognize that foster parents should be the best recruiters for new foster parents, but they could not, in good conscience, speak positively of their County experiences. Many social workers stated the CFS is far more concerned with the budget than with the needs of children and their caregivers.

A Promising Model

During its investigation, the Grand Jury learned about a promising recruitment and retention program entitled The Mockingbird Family Model (MFM). “The MFM is a foster care delivery service model designed to improve the safety, well-being, and permanency of children, adolescents, and families in foster care. The MFM is grounded in the assumption that families with access to resources and support networks are best equipped to provide a stable, loving, and culturally supportive environment for children and adolescents.” (Mockingbird) The model is based on a concept of the MFM constellation, which provides a kind of extended family and community. Six to ten foster families live in close proximity to a centralized, licensed and experienced foster or respite care family in a Hub Home. The Hub Home provides assistance in navigating the system, peer support for children and parents, planned and crisis respite as needed, and social activities. Instead of running away, as many do, teenagers can “chill” for a few nights at a Hub Home, and foster parents can be confident that they will not end up struggling with no support. The model has been successful in stabilizing placements and in retaining foster parents in states and counties where it has been implemented. If Orange County Children and Family Services adopts this model, it may be a valuable asset for recruiting and retaining quality foster parents and provide stability for foster youth.

At the end of November 2015, The County of Orange Social Services Agency submitted a foster and relative caregiver recruitment, retention, and support proposal to the state. This proposal was a requirement for counties that wished to access state funds available for the implementation of AB403. The County proposal contained specific strategies with concrete activities and measurable goals to recruit quality caregivers, specifically for hard to place youth, and to support those caregivers. Several of the strategies are contained in the recommendations in this Grand Jury report. The Grand Jury questioned why, given the long term and urgent need for quality homes for children, and given the County’s voluntary participation in the Quality Parenting Initiative (QPI), the County had not developed its own plan, determined reasonable goals and implemented strategies during past years. In the proposal to the state, the County requested \$6,000,000 to fund these activities. In January, 2016 the Grand Jury learned that the state had granted slightly more than \$2,000,000 to the County agency.

The Role of Foster Family Agencies

According to the state Department of Social Services, County placement agencies use Foster Family Agencies (FFAs) for the placement of children who require intensive or specialized care. FFAs are non-profit entities that recruit, certify, train and support foster parents; provide professional support to foster parents; and find homes for children who require intensive care. Some FFAs operate group homes, although that function will change under the provisions of AB403. Some of these agencies also assist in adoptions. Currently, the Orange County Social

Services Agency has contracts with 51 FFAs. Although these figures are fluid, the Grand Jury learned only about 10% of dependent youth are placed in homes licensed by the County, while 25-35% are placed in private FFAs. Yet, most staff members, even some management, could not identify any intensive and specialized care provided by these 51 agencies. One social worker named a particular agency that placed Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) children. The Grand Jury examined three contracts from frequently used FFAs. None contain provisions for intensive or specialized care. The Grand Jury also interviewed senior staff from a representative sample of FFAs. Many of these individuals also affirmed that they provide beds or homes, but could not identify specialized treatment that they provide. They did not accommodate children with severe medical or mental health needs, they did not specialize in homes for “hard to place teens,” and those located in Orange County had few large homes available for sibling sets. Some FFAs operate homes in neighboring counties where housing is more affordable, and they provide homes that accommodate siblings. One FFA administrator expressed a desire to work with the County to provide homes for dependent youth who are on probation.

Senior FFA staff are knowledgeable and candid about the provisions of AB403 and the difficulties of finding homes for “hard to place” populations. Many of the smaller agencies expressed concern about the cost of accreditation required by the new law. Some of the FFAs provide adoption services and stated that most of their placements are to foster parents planning to adopt babies and small children. Many staff reported positive interactions with Children and Family Services, and praised the caseworkers. However, some lament a lack of communication with CFS. Many senior staff spoke of the challenges of recruiting and retaining foster families, but they have been more successful than CFS in recruitment. The Grand Jury asked a small group of FFA foster parents why they had chosen to work for a private agency rather than the County. The most common response was that the private agency returned the foster parent’s call when the County did not. The others appreciated the frequent visits and availability of FFA social workers.

By law, FFA social workers are limited to caseloads of 15 and are required to visit children three times each month. By contrast, County social workers carry a caseload of approximately 25 and make monthly visits to children. Additionally, a County social worker’s case consists not only of the foster parent and the child, but also the biological parent when the rights of the parents have not been terminated.

CFS stated that FFAs provide more services to the children, but aside from the more frequent visits by the social worker and their lower mandated caseloads, the Grand Jury did not find any differences in the level or quality of care. One CFS manager stated that FFAs have the infrastructure to provide quality care for children, but could not explain what infrastructure meant or why the County lacked it. One executive from the state office of Children and Family

Services praised the Wraparound (WRAP) services that Orange County Children and Family Services provides and stated that, as a result of WRAP, the County already had some of the support services mandated by AB403 in place. The wraparound process is an intensive, individualized care management process for youth with complex needs. A number of social workers told the Grand Jury that they, too, appreciate WRAP. Given that the County has a well-established WRAP program, the Grand Jury could not understand the need for the “special services” of FFAs.

Need for FFA Oversight

In December, 2013, *Los Angeles Times* reporter, Garrett Therolf wrote a damning expose of Foster Family Agencies contracted by the Los Angeles County Social Services Agency. Therolf alleged that children living in homes run by private agencies were about one third more likely to be the victims of serious abuse than children in state supervised homes; that agencies accepted convicted criminals as foster parents; and that the system was so poorly monitored that FFAs with a history of abuse continued to care for children for years. Therolf wrote that at least four children had died as a result of abuse or neglect in homes overseen by private agencies in the five years prior to the publication of his article. (Therolf, December 18, 2013) Another high profile death of a toddler in a Riverside/Imperial Valley FFA home prompted further concern about the system. Some believe the system is ripe for abuse since revenue is based on foster stipends. Unscrupulous FFAs could hire substandard foster parents in order to place more children.

During its investigation, the Grand Jury found no evidence of abusive practices in Orange County. Statistics on placement stability, abuse allegations, incidence reports and other measures of care are consistent in County and FFA homes. Furthermore, AB403 mandates FFA accreditation and additional training and screening for foster families. However, The Grand Jury did find an alarming lack of oversight, monitoring, and evaluating by the County for its 51 contracted FFAs and the homes where County children live. At one time, Children and Family Services (CFS) assigned a unit of ten social workers to monitor FFAs; however, in 2010 this unit was eliminated because of budget cuts. Many social workers expressed dismay and anger about the elimination of a unit they considered essential. Some staff stated that they have nowhere to go to express complaints about FFAs or their homes. Only one social worker is assigned as a liaison between all FFA homes and the County. The Grand Jury was informed by the California Department of Children and Family Services that auditors inspect FFA homes to ensure that they are free of safety hazards. Community Care Licensing (CCL) is charged with annual inspections of all FFAs. However, the Grand Jury searched a Community Care Licensing Division website to find inspection dates for FFAs used by the county. Most inspections occurred at intervals of two years or more. One FFA manager told the Grand Jury that the agency had not been inspected for two years, another FFA manager stated that he/she could not remember when the last inspection took place, and a third said that the inspections were conducted when CCL came to the facility to

investigate a misconduct evaluation. The Grand Jury learned that CCL is understaffed and subject to frequent staff turnover. A unit of County social workers investigates all allegations of abuse or misconduct in foster homes and CCL is also charged with conducting its own investigation. Because CCL is understaffed, misconduct allegations sometimes remain open for long periods. The vast majority of county social workers, representatives of the state Department of Social Services, and management at children's advocacy organizations agree that some FFAs are highly professional and dedicated to the children in their care. However, they also agreed that others are poorly run, have lax standards for foster homes, and are looking to maximize profit. Without close oversight, the County has only anecdotal information to make distinctions.

The Cost of Foster Family Agencies

The Grand Jury learned that the cost of placing a child in a County home is about \$800 per month, but the County pays FFAs about \$1800 - \$2300 per child. These figures are inexact because AB403 is changing the rate structure of foster homes and other care facilities. Placement rates are also dependent on the age and severity of needs of the child. FFA staff stated that the County is getting a bargain since private agencies assume administrative costs and provide special services. The Grand Jury inquired about the relative costs of FFA versus County home placement, but was told that the County, once again, did not have data comparing these costs.

During interviews, various agency staff at all levels stated that the Children and Family Services is too reliant on FFAs to provide homes for foster children and, as a result, do not adequately support recruitment efforts.

Obstacles to Success

During its investigation, the Grand Jury found several systemic problems that contribute to the County's inability to recruit and retain quality foster families. AB403 and the Quality Parenting Initiative state that caregivers are equal members of the child's team, informed of the child's medical and educational history and current needs. AB403 further requires that foster care must be "child centered," not agency centered, and that services be brought to the child. These provisions place great responsibility on already overburdened County caseworkers. The Grand Jury learned that the national recommended caseload for social workers is 16. FFA social workers are restricted to caseloads of 15. Yet, in Orange County, social workers typically have caseloads of between 23 and 30. It is not reasonable to expect that social workers with such high caseloads can nurture relationships with foster families, provide them with the additional support mandated by the law, and develop relationships with children. In the 2014 County Self-Assessment Report, the Orange County Social Services Agency identified a need to "Reduce caseloads so that social workers can spend more time with families (both caregivers and parents) to encourage reunification and help keep placements stabilized." (Self- Assessment January,

2014) The Grand Jury could find no evidence of any implemented or anticipated effort to reduce caseloads.

In addition, Grand Jurors learned that the turnover rate for social workers is 25% annually. For children and caregivers who must adapt to new social workers, the turnover is disturbing. Most social workers, particularly caseworkers, placement workers, investigative workers and emergency response workers interviewed described burnout and lack of support from senior managers. Some described leaders who are so far removed from casework that they are unable to understand the demands placed on social workers. When asked about the high rate of turnover, one manager told the Grand Jury that social workers are part of the trend of millennials who want a work/life balance.

Another problem is poor communication at all levels. Websites intended to provide names, titles, addresses and other contact information for agency staff are outdated and erroneous. The Grand Jury involved in this investigation often made six to eight phone calls before reaching desired staff. Twice the Grand Jury found errors in the class schedules intended for use by foster parents. These were not misspelled words or missing commas, but inaccurate dates and contact numbers. At one class attended by the Grand Jury, the instructor was thirty minutes late and explained to the waiting students that the erroneous date in the class schedule had caused confusion. County staff often spoke of the online site OC4Kids as a recruitment tool; however the Grand Jury noted this website is virtually unchanged month after month and provides little information for potential foster parents except dates, times and locations of orientation classes. Websites did not accommodate online chats and the County has no social media presence. Considering the greatest pool of potential foster parents is adults in their thirties and forties who rely on technology daily, it is imperative that the County upgrade its technology.

Conclusion

During its investigation, the Grand Jury learned that most counties in California and throughout the nation are grappling with the challenging responsibilities of foster parent recruitment and retention. It is not the intention of this study to suggest that Orange County alone is remiss in adequately caring for dependent children in “hard to place” categories. In fact, even the most vocal critics of the system frequently stated during interviews that Orange County Children and Family Services is far better to work with and for than social service agencies in neighboring counties. Nevertheless, every County has an ethical responsibility to care for its children – all of its children, regardless of how difficult the task. Statements of need and intent must be followed up with genuine efforts, with resources and with dedicated staff. In the Academy Award winning film, *Spotlight*, which told the story of the *Boston Globe*’s expose of child abuse in the Catholic Church, a child advocate poignantly states, “If it takes a village to raise a child, it takes a village to abuse one.” (Spotlight, 2015) Orange County cannot be a County that contributes to the neglect and abuse of already victimized children who cannot advocate for themselves by simply

declaring that “they present a problem,” or “we are working on that,” or “we don’t have funds.” CFS must adhere to the spirit of AB403.

For those County officials, employees and citizens unmoved by moral and ethical arguments, it is important to consider practical realities. If foster care children are not given the opportunity to become healthy, educated, stable and contributing adults, the County will “pay” later when they emancipate to unemployment, mental instability and prison.

FINDINGS

In accordance with *California Penal Code* Sections 933 and 933.05, the 2015-2016 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 “Fostering a Better Foster Care System,” the 2015-2016 Orange County Grand Jury has arrived at 10 principal findings, as follows:

- F.1.** Orange County has a shortage of foster families and this shortage will become more acute with the implementation of AB403. The shortage is particularly acute for special populations such as teens, sibling sets, and children with special medical or psychological needs.
- F.2.** Current Children and Family Services recruitment and retention efforts are inadequate and ineffective as evidenced by zero growth in available foster homes.
- F.3.** Children and Family Services does not collect, analyze, or track data on the success of foster parent recruitment and retention efforts.
- F.4.** Children and Family Services has not implemented the principles of the Quality Parenting Initiative in spite of its four year involvement in the project.
- F.5.** Children and Family Services does not adequately serve the needs of hard to place populations such as teens, large sibling sets and children with medical and psychological disabilities.
- F.6.** Children and Family Services has not utilized Samueli Academy as a resource to enhance educational opportunities for foster teens because they have not proactively promoted the school or provided transportation to the school.
- F.7.** Children and Family Services has failed to clarify the role of Foster Family Agencies contracted by the County.
- F.8.** Children and Family Services does not adequately monitor the 51 Foster Family Agencies contracted by the County to ensure that they are adequately meeting the needs of the children in their care.
- F.9.** The current caseload of Orange County social workers exceeds industry standards and will hamper efforts to implement AB403.

F.10. Effective outreach is hampered by limited and outdated technology.

RECOMMENDATIONS

In accordance with California Penal Code Sections 933 and 933.05, the 2015-2016 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 “Fostering a Better Foster Care System,” the 2015-2016 Orange County Grand Jury makes the following 17 recommendations.

Children and Family Services should

- R.1.** Identify effective recruitment strategies and prepare and approve a plan that will increase the number of active County foster families by a minimum of 75 by July 1, 2017. (F1)
- R.2.** Identify effective strategies and prepare and approve a plan to increase the number of active County placements for large sibling sets, teens, and youth with high needs by a minimum of 30 by July 1, 2017. (F1)
- R.3.** Dedicate available AB403 funds to enable foster parents to participate in recruitment efforts, serve as mentors and attend professional events beginning in County Fiscal Year 2016-2017. (F2, F4)
- R.4.** Use available AB403 funds to provide additional transportation services for foster youth to appointments, visitations, court dates, etc. beginning in County Fiscal Year 2016-2017. (F2, F4,)
- R.5.** Provide foster parents with timely access to information and identify and adopt strategies to make them respected, equal and integral parts of the child’s team as mandated by AB403 and according to the principles of the Quality Parenting Initiative. (F2, F4)
- R.6.** Document the use of the County Efforts to Outcomes database to track and evaluate the success of foster parent recruitment and retention efforts. (F2, F3)
- R.7.** Prepare and approve a plan to reduce to two the average annual number of placements for teens and other children in long term foster care by July 1, 2017. (F5)

- R.8.** Prepare and approve a plan to increase the percentage of sibling sets placed together by 20% by July 1, 2017. (F5)
- R.9.** Rewrite Foster Family Agency contracts to clarify their specific role and limit contracts to those that provide intensive and specialized care in compliance with AB403. (F7)
- R.10.** Reinstate a unit of social workers to monitor Foster Family Agencies by July, 2017. (F8)
- R.11.** Reduce the caseload of social workers to a maximum average of 16 (the national recommendation) by July 1, 2017. (F9)
- R.12.** Prepare and approve a plan for an employee retention program to achieve a goal of reducing the turnover of County social workers to 10% per year by January 2018. (F9)
- R.13.** Use AB403 funds to contract with a professional marketing agency to assist in foster home recruitment efforts. (F2)
- R.14.** Develop a process to provide accurate and current information on Children and Family Services websites by January, 2017. (F2, F10)
- R.15.** Upgrade technology to reflect current industry standards by July 1, 2017. Upgrades may include, but are not limited to, websites offering agent chats, user blogs and case management systems. (F2, F10)
- R.16.** Complete a study to determine the comparative cost of services provided by County homes versus Foster Family Agencies by January, 2017. (F7)
- R.17.** Prepare and approve a plan to triple enrollment of foster youth to Samueli Academy for the 2016-2017 academic year and provide transportation to the academy as needed. (F6)

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 County 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) detail, 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 or requested from:

Responses are required from the following governing bodies within 90 days of the date of the publication of this report: Orange County Board of Supervisors (Findings 1-10, Recommendation 1 – 17).

Responses Requested:

Responses are requested from the following non-elected agency or department heads: Orange County Social Services, Department of Children and Family Services (Findings 1-10, Recommendations 1 -17).

WORKS CITED

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APPENDIX A: Glossary

AB403, Continuum of Care Reform: Comprehensive reform legislation intended to make sure that youth in foster care have their day-to-day physical mental and emotional needs met; that they have an opportunity to grow up in permanent and supportive homes; and that they have an opportunity to become self-sufficient, successful adults.

Congregate Care: see Group home.

Emancipation: The legal process by which a minor child petitions the court to allow him/her to become an adult.

Foster Family Agency (FFA): a non-profit entity that recruits, certifies, trains and supports foster parents; provides professional support to foster parents; and find homes for foster children.

Foster Home: A temporary home where a youth may live while in the custody of the state.

Group home: A home that cares for more than six foster youth, often adolescents. In California, recent legislation requires that Group homes transition to Short Term Residential Treatment Centers.

Independent Living Program (ILP): Provides training, services and benefits to assist youth in achieving self-sufficiency prior to and after leaving the foster care system.

Intensive Therapeutic Foster Care: Placement in specifically trained foster parent homes for foster youth with severe emotional or behavioral health needs.

Intensive Therapeutic or Treatment Foster Homes: A foster home in which the foster parents have received special training to care for a wide variety of children and adolescents, usually those with significant emotional or behavioral problems. These parents are more closely supervised and assisted than parents in other foster homes.

Kinship Foster Family Care: The full-time nurturing of a child requiring out- of-home placement by someone related to the child by family ties.

Matching: A process by which an adoptive family or potentially adoptive family is chosen for a family, based on the needs of the child.

Mockingbird Family Model (MFM): A foster care delivery service model designed to improve the safety, well-being, and permanency of children, adolescents, and families in foster care. The MFM is grounded in the assumption that families with access to resources and support networks are best equipped to provide a stable, loving, and culturally supportive environment for children and adolescents.

Multi-Dimensional Treatment Care (MDTC): A behavioral treatment alternative to residential placement for youth who have problems with chronic anti-social behavior, emotional disturbance and/or delinquency.

Non-Related Extended Family Member (NREFM): a term used to describe an individual who has a prior close relationship with a child he/she is fostering. For example, a NREFM may be a former teacher or neighbor of the foster child.

Post-Traumatic Stress Disorder (PTSD): A mental health condition that is triggered by a terrifying event.

Quality Parenting Initiative (QPI): The Quality Parenting Initiative is modeled after a project of the same name in Florida. It began statewide in 2009 as a collaborative effort with the California Department of Social Services and the County Welfare Directors Association. The intent of QPI is to strengthen efforts on a statewide basis for the retention of quality caregivers.

Resource Family Approval Process (RFA): A family friendly and child-centered caregiver approval process to replace the existing multi-level process for licensing foster homes, and approving relatives, adoptive parents and guardian caregivers.

Respite: Care provided to a foster child for a short period of time by someone other than the primary caregiver.

Reunification: Return of a child to the family from which he/she was removed.

Short Term Residential Treatment Center: (STRTC) A new facility type mandated by AB403 to replace group homes/congregate care which will provide short-term, specialized, and intensive treatment for foster youth whose needs cannot safely be met initially in a family setting.

Sibling Sets: A group of two or more related children who share at least one biological or adoptive parent in common.

WrapAround Program (WRAP): An intensive individualized care management process for foster youth with complex needs. During the WRAP process, a team of individuals who are relevant to the well-being of the youth collaboratively develop a plan, implement that plan and evaluate success over time.

**SHERIFF'S TEMPORARY
DETENTION/HOLDING AREAS,
PATROL AREAS AND SPECIAL
SERVICES**



GRAND JURY 2015-2016

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EXECUTIVE SUMMARY

As required by California Penal Code, each Orange County Grand Jury must inquire into the operations and management of the County's jails. As expected, this has resulted in numerous investigations and reports. This year, however, the Grand Jury decided to inquire into a number of the Sheriff's other law enforcement activities, areas that are actually quite extensive. These involve the Sheriff's Custody and Court Operations Command that provides inmate and courthouse security at Orange County's Superior Courts, as well as some of the more special commands that provide ground, air, sea, and counter terrorism operations.

The Grand Jury found that the Sheriff's Commanders and key staff managed all these law enforcement areas very well but did identify a number of vulnerabilities that should be corrected. These will require the Sheriff and other County leaders to take a leading role. The Grand Jury has described these areas of concern in the report's findings, and has 11 specific recommendations for removing these vulnerabilities. These recommendations include increasing security at the Superior Court Facilities as well as providing for both Harbor Patrol Marine Operations and for those deputies providing security at the John Wayne Airport.

In all its observations of Sheriff's deputy and Special Service Officer interactions with the public, the Grand Jury saw uniformly professional and courteous behavior.

Finally, during the course of this investigation, three inmates escaped from the Orange County Central Men's Jail. As this incident is under investigation by Federal, State and local authorities, the Grand Jury has not addressed it in this report. Notwithstanding, this event underscores the need for increased security in all confinement settings.

It is the Grand Jury's hope that these agencies will use the findings and recommendations provided in this report as a means to strengthen security not only at the Superior Courthouses, but also at the county's jail facilities.

BACKGROUND

Penal Code Requirements

The California Penal Code Section 919(b) requires that each Grand Jury inquire into the condition and management of the various public prison facilities within their respective county jurisdictions. As there are no state prisons in Orange County, the Grand Jury usually chooses to inquire annually into the condition and management of the various adult jails and juvenile detention facilities in the county. As stated in the Executive Summary, the 2015-2016 Grand Jury decided to focus instead on temporary detention/holding areas in the Orange County

Courthouses, and then to review the Sheriff's operations both in selected patrol areas and within selected special operations areas.

Creation of the Orange County Sheriff

Orange County appointed Richard T. Harris as its first Sheriff in 1889. In 1890, Theo Lacy became Orange County's first elected Sheriff. For a short time during the early years of the county, the Sheriff used a local business in Santa Ana as the County Jail. The entire Sheriff's Department annual budget was \$1,200, which included salaries, facility costs and food for the jailed inmates (OC Sheriff's Museum, 2016).

During the next 125 years, Orange County grew from a rural, agricultural environment to a thriving and modern residential, urban, and recreational county. Likewise, the Orange County Sheriff's Department has developed into a complex, multifaceted organization of men and women who demonstrate proficiency, resolve, and professionalism to ensure the well-being of county residents.

The Current Orange County Sheriff's Department

Today, Sheriff's deputies and Special Service Officers use the latest technology and resources available to provide law enforcement for thirteen contract cities, three harbors, a major airport, a large expanse of unincorporated land, and more than three million residents. The Sheriff also operates five jails that can house close to 7,400 inmates and maintains security for the public and for the detainees that need to appear at the Superior Courts in the County.

Currently the Orange County Sheriff's Department patrols the county by land, on water, and in the air. Sheriff's deputies use watercraft, helicopters, specially equipped vehicles and trained dogs and horses to support the various services they provide. The gunslingers and rustlers of Sheriff Lacy's day may be history, but the present day need for sophisticated law enforcement practices could not be more topical (OC Sheriff's Museum, 2016).

The Sheriff's Department has transitioned into a technically advanced, highly capable organization that serves as a model for the many other police organizations that take advantage of the training and expertise that the Orange County Sheriff's Department offers. In support of its law enforcement and jail responsibilities, the Orange County Sheriff's Department operates a Training Academy for its new staff, as well as advanced training for veteran sworn staff. Training is also available to and used by local, state, federal and non-law enforcement agencies.

Additionally, the Sheriff operates the county's Crime Laboratory. In July 2008 this facility became the first full service forensic laboratory in California, and it is now fully certified by the

American Society of Crime Laboratory Directors Accreditation Board, as well as recognized for excellence internationally. (OCSD Crime Lab, 2016).

Also in 2008, the Sheriff's Department formed the Strategy, Accountability, Focus and Evaluation (SAFE) Division under the Professional Services Command. The primary purpose of the SAFE Division is to further the Department's commitment to excellence by improvement of policy and practices within the entire Sheriff's Department. This unit also works to reduce worker's compensation liability by accommodating injured employees and allowing them an avenue to return to work. In cases where department-wide training is required to reduce injuries, the department conducts appropriate training and facility inspections in order to reduce such incidents.

By evaluating the various aspects of risk in the Sheriff's Department, SAFE contributes to the safety and operational well-being of the organization. Committed sworn peace officers, supported by a professional civilian staff, are dedicated to making the Orange County Sheriff's Department a safe environment in which to work.

Scope and Focus of This Report

This report provides information concerning the operation of county temporary detention/holding facilities located within the county's courthouses, determines if formal procedures are in place and followed, and additionally notes through direct observation a number of security concerns that could affect Sheriff's Special Officers and deputies within selected courthouse facilities. For the purpose of this report, the Grand Jury also investigated the configuration and operation of the Sheriff's buses and vans used to transport inmates to the various court facilities.

Because the public's first experience with law enforcement usually occurs at the Sheriff's sub-stations and patrol areas, the Grand Jury investigated these through a series of Sheriff's sub-station visits, ride-alongs and interviews grounded in a review of standard policies and procedures.

Lastly, this report provides insight into a number of the more specialized law enforcement services provided by the Sheriff at the harbors, at the John Wayne Airport, with air support and with Homeland Security. In each case, the Grand Jury conducted its investigations through visits, ride-alongs and interviews based on its review of procedures and policies as published by the Orange County Sheriff.

Prior Orange County Grand Jury and Other Reports

While Grand Jury reports since 2001-2002 acknowledged patrol areas and temporary, detention/holding areas within Orange County, with the exception of the 2008-2009 Grand Jury report titled *The Condition of Orange County Jails*, neither of these areas has been a principal focus.

In July 2008, the Board of Supervisors contracted with Crout & Sida Criminal Justice Consultants, Inc. to conduct an independent, top to bottom evaluation of jail and detention/holding area operations in the county. This was the result of a series of events that had occurred during 2007 and early 2008 and focused the public's attention on the Sheriff's Department and its management of jails and detention centers. Some of the more prominent events that had motivated the Board of Supervisors to take action included:

- The resignation of the Sheriff in early 2008 after his indictment on felony charges;
- The appointment in June 2008 of a new Sheriff by the Board of Supervisors;
- The killing of an inmate at the Theo Lacy Jail that had brought the attention of the U.S. Attorney General to the county's management of its jails and detention centers; and
- The 2008 creation of the Office of Independent Review (OIR) by the Board of Supervisors to assist, oversee and advise the new Sheriff from an outside, independent perspective.

Crout & Sida published their report, *Orange County Jail Assessment Project*, in November 2008 and provided four major conclusions:

- Inmate holding areas (temporary detention/holding areas) are in need of renovation to ensure that staff can properly monitor and supervise inmates;
- Court areas where inmates are moved by Sheriff's deputies in and around courtrooms should have an upgraded Closed Circuit Television (CCTV) system to aid custody staff in supervision of inmates;
- Courthouse facilities are notoriously risky with regard to security and that all court personnel need to be cognizant of the potential for hazards and how to assist in courthouse security; and
- Staffing shortages affect the ability of the Sheriff's Department to safely operate and manage the jail system.

While the 2008-2009 Grand Jury Report did cite the Crout & Sida report, it addressed only the first two of the report's conclusions listed above and chose instead to focus more on ways to fund expansion of the Musick facility, improve deputy overtime management, avoid overcrowding of jails, and encourages development of current risk management programs and the new OIR.

The Sheriff and the Board of Supervisors both agreed with the Grand Jury's facility upgrade recommendations, but noted that while ongoing programs would modernize some electronic controls, it was premature to establish firm dates for larger upgrades. The primary reason given was the fact that all courthouse facilities in the county would become the responsibility of the State by the end of 2009. This transfer of ownership did occur on December 23, 2009 and at that point, upgrade of these facilities moved outside the purview of the Orange County Grand Jury.

At present, a Superior Court Facility Manager schedules courthouse facility upgrades and repairs based on guidance he receives from the Superior Court Judicial Council in Sacramento. This Council, consisting of representatives from the Superior Court System, prioritizes requirements for and use of funding for the various California Superior Court controlled facilities.

The equipment required by the Sheriff's Professional Services Command, Court Operations Division for courthouse security and the control and management of detainees, however, must be provided by the Sheriff and the Board of Supervisors through the normal budget process and projects may take a number of years to complete.

It is the conclusion of this Grand Jury that while the 2008-2009 report did recognize issues with temporary detention/holding areas and courthouse security, the Grand Jury's recommendations were largely ineffective due to budget issues and changes in the parties responsible for their implementation.

METHODOLOGY

This Grand Jury conducted its investigation of the temporary detention/holding areas, patrol areas, and special law enforcement operations through interviews, on-site visits, presentations and a review of official Orange County Sheriff's documentation relating to in-custody procedures.

Once the Grand Jury collected and organized this information, it measured the results against best practices as established by the Federal Bureau of Investigation and the stated mission of the Sheriff's Department.

During the course of this investigation, the Grand Jury took the following actions:

- Interviewed senior representatives of the department or facility visited and queried other personnel in order to substantiate information developed;
- Observed operations during site visits to each of the facilities noted in this study;
- Attended formal presentations targeted to the Grand Jury areas of interest and participated in site tours at all of the adult County jail facilities and juvenile hall;

- Reviewed previous Grand Jury reports and relevant documentation to substantiate information found during an interview or observation;
- Participated in randomly selected Sheriff deputy ride-along activities observing police practices and interactions with the community; and
- Visited and observed operations at the Sheriff's Department facilities listed in Table 1 below:

Area Visited	Purpose
Central Jail Complex, IRC	Tour/Briefing/Interview/Q&A
Central Jail Complex, Men's	Tour/Briefing/Interview/Q&A
Central Jail Complex, Women	Tour/Briefing/Interview/Q&A
Theo Lacy Facility	Tour/Briefing/Interview/Q&A
James A. Musick Facility	Tour/Briefing/Interview/Q&A
Juvenile Hall (Probation)	Tour/Briefing/Interview/Q&A
Office of Sheriff/Coroner	Tour/Briefing/Interview/Q&A
Office of the Coroner	Tour/Briefing/Interview/Q&A
Orange County Crime Lab	Tour/Briefing/Interview/Q&A
Harbor Patrol, Dana Point	Observation/Information
Harbor Patrol, Newport	Observation/Information
Central Justice Center	Observation/Information
Harbor Justice Center	Observation/Information
West Justice Center	Observation/Information
John Wayne Airport	Observation/Information
Southwest Operations Division	Observation/Information
Southeast Operations Division	Observation/Information
Unincorporated Patrol Areas	Observation/Information
Contract Cities	Observation/Information
Air Operations	Observation/Information
Homeland Security Division	Observation/Information

Table 1: Sheriff's Facilities Visited

INVESTIGATION AND ANALYSIS

This Grand Jury report provides a broad perspective as to the capability and functioning of the Sheriff's Department operations divisions in the field. The Sheriff operates five jail facilities and five temporary detention centers. The Central Justice Center, Lamoreaux Family and Juvenile Law Justice Center, North Justice Center, West Justice Center and Harbor Justice Center are facilities that maintain temporary detention /holding centers. The 2015-2016 Grand Jury randomly selected the Central Justice Center, the Harbor Justice Center and the West Justice Center and visited them to determine conditions and operations of each. The Grand Jury also conducted numerous site visits to detention facilities and patrol areas throughout the County, and then selected a random number of these areas to visit, with little or no advance notice.

Development of the Professional Services Command, Court Operations Division

Prior to 1994, the Orange County Marshal's Service provided Court Operations and Security services for the Orange County courts. Events led to a merger of the Orange County Marshal's Office and the Orange County Sheriff's Department. The Sheriff's Department, with three thousand personnel, dwarfed the Marshal's Service and its five hundred Deputy Marshals. The merger coincided with the court transition from the municipal and Superior Courts to the Consolidated Superior Courts (Marshal, Sheriff 2000). A motivating factor for the Sheriff's Department was the opportunity for the county to consolidate and reduce expenditures during an economic downturn. The Sheriff's Department had the funds and resources to modernize equipment and re-staff the courts. The restructuring resulted in increased personnel, additional equipment (e.g. metal detectors) and tighter entry requirements into the court facilities.

The Orange County Sheriff's Professional Services Command, Court Operations Division, a new command, now provides security for each courthouse in the county. This includes all exits as well as the temporary detention/holding facilities. Deputies may hold a person awaiting a court hearing or appearance in the Court Detention facility for up to twelve hours. As shown in Table 2 below, each court facility has a different prisoner capacity:

Courthouse Facility	Inmate Capacity
Central Justice Center	360
Harbor Justice Center	140
Lamoreaux Justice Center	68
North Justice Center	166
West Justice Center	270

Table 2: Facility Prisoner Capacity

General Observations of the Temporary Detention/Holding Areas

The Grand Jury found the temporary detention/holding areas to be clean, with no evidence of trash. Deputies provide the inmates with a cold lunch, then immediately collect, and remove all trash and waste receptacles once the meal is finished. The effort to maintain order and cleanliness within the facilities is obvious amidst such a high concentration of traffic.

Each facility inspected also has procedures in place for conducting an inspection of the entire detention/holding area at the beginning of every court day. Deputies ensure that all equipment is operational and that there are no lighting or plumbing issues requiring maintenance. Sheriff's personnel check all cell doors and areas inmates may use to ensure proper security. Deputies inspect all holding cells, security tunnels, stairways, maintenance access panels and elevators. Additionally, deputies search the entire facility for weapons and contraband of any sort, and report any items identified as suspect, unsafe, or requiring repair to the Detention Sergeant.

Central Justice Center

General Comments

The Grand Jury toured the detention/holding facilities located within the Central Justice Center. This temporary detention center processes between 115 to 240 men and women every court day. The Grand Jury observed deputies performing this function in a methodical, well-trained fashion.

New arrivals to the detention/holding facility arrive at varying times throughout the workday. Inmates arrive via a designated bus or other vehicle specifically fitted for the transport of inmates. Typically, each bus holds six inmates in seats in the front portion, while twelve inmates travel in an enclosed center section and another 28 to 33 in a separate rear area. The Grand Jury noted that this design allows deputies to divide and independently secure each section. Prior to a bus departing for a court detention center, deputies search each prisoner and then, depending on the threat level or the prisoner's potential for violence, may secure him in handcuffs and/or shackles using martin chains (a leather belt to which specially designed handcuffs allow an inmate's hands to be secured to his sides).

Upon their arrival at the Central Justice Center, deputies confine and secure the inmates in the loading bay and then take them directly to the detention/holding facility. Inmates have no exposure to the exterior of the Central Court at any time. In concert with the off-loading process, the deputies segregate inmates using criteria such as gender, race, and potential for violence, protective custody, mental or emotional state, and case number.

Deputies demonstrate firm, but respectful treatment of inmates in their charge, reducing the potential for misbehavior or violence. During one interview, an experienced deputy explained that the Sheriff has trained deputies to identify a potentially hostile environment that may be developing within their area of responsibility, and that any of these observations will initiate both increased presence and vigilance.

Deputies remain alert for inmates who appear to be experiencing emotional anxiety or mental health issues. If they suspect an inmate is experiencing an episode, they request immediate professional medical assistance. If deputies observe any deterioration in the inmate's emotional or physical state, he or she is returned to jail for medical evaluation. If a more serious condition is observed, the inmate and an escorting deputy are transported by ambulance to the nearest available emergency room.

During one site visit, the Grand Jury observed the Sheriff Department's ability to respond to a medical emergency. A visitor to the Central Justice Center collapsed at the entryway because of an unspecified ailment. Sheriff's Special Officers responded to the emergency in a calm, well-

practiced manner and cared for the individual until Emergency Medical Technicians could arrive and then transport the person to a local hospital. During this brief period, there was no interruption of service to visitors, and court employees and the security screening process continued seamlessly.

Pedestrian Screening Area Observations

All visitors to the Central Justice Center enter and exit the facility at two locations and the Custody and Security Command staff employs three screening devices that scan for weapons. There are two screening devices at the north entrance, one to screen the general public and prospective jurists, and one for court employees, law enforcement personnel, and court officials. Deputies have positioned the third screening device at the south entrance to the courthouse. On any given day, more than 2,000 persons enter and depart this facility via these locations. Every individual entering is required to pass through the scanners, and this can cause congestion if not carefully controlled. Partitions separate persons entering and departing.

Based upon the observation that the Sheriff's Special Officers at the courthouse entrances had little protection should an armed individual enter the building and begin shooting, the Grand Jury discussed this with some of the officers assigned this security duty. Some of the deputies interviewed confirmed this concern primarily because the bulletproof vests worn by these Special Service Officers will not stop a round aimed at a body part other than the upper torso and secondarily because the portable partitions used to channel the public into the screening lanes do not provide ballistic protection. Therefore, the Sheriff's Special Officers who are on the first line of defense are exposed and vulnerable to attack. Additionally, screening stations do not provide for adequate channeling of pedestrians to limit congestion at the screening station. Similar vulnerabilities were present at all courts visited.

Harbor Justice Center

General Comments

The Grand Jury toured the detention facilities of the Harbor Justice Center, which has a capacity of 141 inmates. Despite the different configuration of the facility, deputies' procedures for handling inmates and providing inmate segregation are similar to that used at the Central Justice Center.

Transportation Bay Observations

The Grand Jury noted that inmates arriving and departing via the Harbor Justice transportation bay are visible and vulnerable to the public prior to entering and after exiting the court building. This vulnerability could lead to terrible consequences should anyone with criminal intentions want to use this gap in security to their advantage. It is plausible that someone outside the facility

could trigger an attack on an inmate for personal reasons or to prevent testimony on a case, compromising both inmate and deputy safety.

Harbor Justice Center Main Entry Observations

The Grand Jury observed a great deal of congestion at the Harbor Court main entrance. It was evident that persons inquiring about locations, dockets and other general information all migrated to the information window located in the foyer, just outside the screening area. Deputies directed many persons to pass through the screening area and check the video monitors situated well inside the building to determine if their case was on the docket. The Grand Jury observed people checking the video monitors, becoming frustrated and then returning to the information line. This not only caused congestion, but also obstructed the Sheriff's security screening personnel line of sight in the foyer. Video surveillance of the facility is limited. Sheriff's personnel indicated they could not see portions of the facility exterior and that there had been incidents of vehicle vandalism. The Grand Jury viewed security surveillance of the building and determined it was insufficient.

West Justice Center

General Comments

Although the West Justice Center (aka Westminster Justice Center) temporary holding/detention facility can accommodate up to 270 inmates a day, the daily average for inmates processed is 45. Deputies segregate and process inmates in a manner similar to the other court facilities. The inmates normally spend an average of eight hours at this court. The Grand Jury noted that the control room in the detention center is relatively large and comfortable in comparison with the much smaller quarters occupied by deputies at the Central Justice Center. All of the monitoring equipment was functional and appeared to provide excellent coverage of the detention/holding area.

Review of Court Detention Center Procedures

General Comments

The Orange County Sheriff's staff provided the Grand Jury a complete copy of Court Detention Procedures, Series 1100. The Grand Jury reviewed the procedures and then compared them to information gathered from personnel interviews and on-site inspections. The Grand Jury found all three sources of information to be consistent with actual practice.

Inspection of Metal Detectors and Inmate Transport Vehicles

General Comments

As the result of a public concern letter, the Grand Jury visited the Central Men's and Women's Jail and the Theo Lacy Facility for the purpose of observing two areas of potential concern. Members of the Grand Jury tested metal detection devices for functionality by physically walking through them. The devices operated properly and alerted staff to the presence of metal. The Grand Jury tested the metal detectors at the Theo Lacy Facility and found them to be in good working order. The Grand Jury noted that none of the jail facilities visited during the course of this study employed full body scanners capable of detecting non-metallic weapons, tools or other contraband.

The Grand Jury also inspected inmate transport buses for functionality and habitability. Deputies assisting in the Grand Jury inspection started engines and air conditioning systems of randomly selected vehicles, and all transport vehicles and their air conditioning systems worked properly. In addition, the Grand Jury inspected selected vehicle service records and found them to be current.

Contract Services and Patrol Areas

General Comments

As shown at Table 3 below, the three Operational Commands of Orange County Sheriff provides contract police services to the following Orange County cities and unincorporated areas of the county:

Southwest Ops.	Southeast Ops.	North Ops
Aliso Viejo	Trabuco Canyon	Stanton
Dana Point	Coto De Caza	Villa Park
Laguna Hills	Ladera Ranch	Yorba Linda
Laguna Niguel	Wagon Wheel Ranch	
Laguna Woods	Las Flores	
San Clemente	Mission Viejo	
San Juan Capistrano	Santiago Canyon	
Rancho Santa Margarita	Rose Canyon	
	Lake Forest	

Table 3: Patrol Areas by Operational/Geographic Responsibility

According to the Orange County Sheriff's brochure titled, *A Tradition of Service, Honor & Values and Benefits of Contract Law Enforcement*, contract police services have four major benefits:

- Contract cities experience significantly lower costs for police services than non-contract cities;
- Contract law enforcement is a cost efficient, responsive and flexible option;

- Contract cities experience no reduction in service or loss of control; and
- Contract city benefits are not limited to per-capita cost savings, but also include reduction in liability, relief from POST (Peace Officer's Standards and Training) requirements, and elimination of collective bargaining, internal affairs, recruiting, training and other personnel issues.

Because a contract city may have unique requirements for law enforcement, the Sheriff can provide any of the enhanced services listed below:

Career Criminal Apprehension Team	Central Records
Cliff Rescue Team	Reserve Forces
Coroner	Sex Crime/Child Abuse
Crime Prevention detail	Tactical Support Team
Correctional Facilities	Recruit Training
Dive Team	Hostage Negotiations
Explorers	Mounted Patrol
Forensic Science Service	Narcotics Detail
Fraud/Checks Detail	Orange County Criminal Activity System
Fugitive Warrant Detail	Jail Inmate Transportation
Hazardous Device Squad	Helicopter Response
Homicide Detail	

The Sheriff will not differentiate or refuse service to any county entity and extends the courtesy of contributing personnel or equipment during an emergency or crisis at no additional cost, regardless of contract. Examples of this additional service include use of the Bomb Squad, SWAT or Aviation Support.

John Wayne Airport, (Airport Police Services Bureau)

General Comments

In 1923, Orange County resident Eddie Martin constructed a small landing strip on land owned by the Irvine Company. During this period in Orange County's history, there was not much need for a full time airstrip, as the amount of air traffic at the time did not warrant this. On Sundays, an adjacent former runway served as the "Santa Ana Drag" raceway until 1959 when air traffic trumped drag racing. As air traffic increased, Eddie Martin founded Martin Aviation, one of the nation's oldest aviation firms. It still operates at the airport today (History of OC Airport, 1985).

From its humble beginnings, the small landing strip grew to 500 acres. During the past decade the terminal building has grown to 337,000 thousand square feet, and accommodates roughly

270 daily carrier arrivals and departures while serving approximately 10.2 million airline passengers a year. Passenger projections for 2016 are upwards of 10.5 million travelers.

The Orange County Sheriff provides a wide variety of services to the public at the John Wayne Airport, which Orange County owns and operates. The average traveler may not be aware of the complex security and safety-oriented activity that occurs, beyond a deputy asking a visitor to move his vehicle. The entire Orange County population of three million does not compare to the annual transient traffic at the John Wayne Airport.

Orange County Sheriff's deputies Sheriff Special Officers are responsible for remaining vigilant for threats, and as airports have been, and remain, an increasingly popular terrorist target, the maintenance of safe and secure airport operations requires that the deputies be well versed in:

- Aviation Security measures;
- Transportation Security Administration regulations;
- Federal Aviation Administration regulations;
- Detection of explosives and/or drug smuggling and transport;
- General safety of visitors;
- General law enforcement;
- Emergency response to medical issues; and
- Lost items.

Sheriff's personnel share the duties of airport security with several Federal agencies. The United States Department of Homeland Security is solely responsible for the screening of passengers, their baggage and carry-on articles, and the Transportation Security Administration (TSA) provides personnel for this purpose. However because TSA personnel are not sworn peace officers, all illegal activity must be reported immediately to the Orange County Sheriff's Department for action.

In addition, while a civilian contract agency, Universal Protection Services (UPS) has responsibility for various remote locations on the perimeter of the airport's property; this entity has no powers of arrest and is required to notify the Sheriff's Department whenever it observes security infractions.

Finally, the Sheriff's Department must work closely and coordinate airport activities with the Deputy Airport Director of Operations. Interviews with both the Sheriff and Airport Operations staff indicated that this has historically been, and continues to be, a very cohesive and productive relationship.

Airport Command Center Observations

The Grand Jury noted that the Airport Command Center is currently equipped with outdated equipment that is overdue for update and replacement. The present systems lack backup should the primary fail, and in the event of a critical system failure, the entire airport security system could be at risk. Both the Sheriff and airport management are involved in the design process that will result in a general upgrade of the Airport Command Center, to include backup capability.

K-9 Unit Yard and Office Structure Observations

The Grand Jury toured the K-9 training area and animal pens on the airport grounds. The area houses three specially trained and certified dogs that can detect explosives and narcotics. The animal pens were hygienic and the training area/exercise yard was clean and trimmed.

The Grand Jury noted that the deputy dog handlers are using a wooden trailer as an office. The entry into the structure appears rusted, worn and unsafe. The Grand Jury believes John Wayne Airport management should replace this trailer with a more permanent structure that better represents the airport and supports the needs of the deputies.

Los Angeles International Airport, Lessons Learned

November 1, 2013, a man armed with an assault rifle walked into one of the busiest airports in the nation, Los Angeles International (LAX). Within minutes and before anyone could respond to this threat, the shooter had killed one TSA screener and seriously wounded three other people. When the Grand Jury discussed this horrific event with a senior representative of the Sheriff's Department, that deputy stated that the department consistently trains for events such as the LAX shooting, studying details and applying lessons learned to their own tactical procedures.

One of the requests made by TSA after the LAX shooting was to have armed officers strategically positioned so that they could respond to an emergency quickly. The Sheriff's Department accomplishes this by conducting tactical patrols with high public visibility. Deputies outfitted in tactical uniforms and armed with tactical weapons patrol the three terminals at the airport at non-specific intervals. This serves as a deterrent to violence.

Harbor Patrol Marine Operations Bureau

General Comments

The Grand Jury toured Newport Harbor, Orange County's largest harbor, which also serves as the base of operations for the Harbor Patrol Marine Operations Bureau, part of the Sheriff's Homeland Security Division. The Newport Beach location has overall command responsibility for Dana Point and Sunset Harbors and encompasses nearly fifty miles of patrol area that includes three miles of open water.

The Lieutenant assigned to the Harbor Patrol Marine Operations Bureau serves as the harbormaster for the Newport Harbor. Dana Point and Sunset/Huntington Harbors also have supervisors assigned as harbormaster. The harbormaster is responsible for monitoring the movement of all vessels in and out of port. Each vessel is required to check in with the harbormaster when seeking a visitor's anchorage.

Of the 70,000 watercraft currently registered in Orange County, 15,000 are home ported at these three harbors. Newport is homeport to the largest vessels. During the tour, the Grand Jury observed water borne training exercises involving a hypothetical distressed vessel (dead in the water and adrift in the harbor). The responding harbor patrol boats secured a towline to the two stories tall, 70 foot-long craft to stabilize its movement. Having safely secured the craft, two patrol boats tied along the port and starboard sides and used their engines to guide the vessel safely into its berth.

While observing this exercise, the Grand Jury noted that a deputy documented the event using a cell phone camera. Deputies advised the Grand Jury that none of the six fireboats or nine patrol boats is equipped with video recording equipment, such as dash cameras on patrol vehicles. The Grand Jury determined that adding this equipment would assist the Sheriff's Department to record significant events. Video or still photography would be invaluable in the case of search and rescue operations, firefighting documentation, accident investigation, law enforcement operations and distressed vessel response.

Personnel assigned to the Harbor Patrol are constantly involved in professional-level training in various disciplines. Firefighting and training staff use a craft designated as the burn boat. Under controlled conditions, deputies ignite containers in the boat to simulate a realistic fuel fire. Sheriff's deputies practice often for such emergencies at all three harbors.

The Harbor Patrol Marine Operations Bureau is also a vital arm of a multi-disciplined force that protects county residents against the threat of a potential terrorist attack. Under the umbrella of the Sheriff Department's Homeland Security Division, the Harbor Patrol Operations Bureau coordinates with the U.S. Coast Guard, Federal Bureau of Investigation, Immigration and Border Patrol and the Drug Enforcement Agency in support of a range of law enforcement duties. The Sheriff's Special Weapons and Tactics Team (S.W.A.T.), the Air Support Unit and other land-based elements of the Sheriff's Department are also able to support the harbor units as needed.

Additionally, the Harbor Patrol Marine Operations Bureau at Newport Beach serves as one of the backup dispatch centers for the County's primary Emergency Operations Center at Loma Ridge. In the event of a countywide emergency, this headquarters may serve as a dispatch communications center.

Dana Point Harbor Patrol

General Comments and Observations

The Grand Jury visited the Sheriff's station at the Dana Point Harbor and during their tour, noted that the deputies performing in the capacity of harbormaster did not have any modern surveillance equipment and were relying instead on visual observation, aided by binoculars. Advanced security monitoring equipment is not currently available to them, and the Grand Jury concluded that this could be a security oversight. In the event of a watercraft accident in the most congested area, the mouth of the harbor, deputies would have to go to the scene in order to determine what was occurring.

The Grand Jury had to interrupt its interview at Dana Point because of a vessel in distress radio call for assistance. The Grand Jury accompanied the responding deputies to the scene of the disabled vessel. Fortunately, the operator of the disabled vessel was able to start his engine without assistance and the deputies escorted the vessel into the harbor and secured it at its berth without further incident.

The Grand Jury accompanied the deputies in response to another radio request for back up of a land-based Sheriff's patrol. The public at one of the harbor facilities reported a suspicious person. With the public observing from a distance, deputies quickly identified, detained, and questioned the suspect. The Grand Jury observed that the conduct of the deputies during this event was very professional, and combined with other interactions observed, concluded that a good relationship existed between residents of the harbor community and Sheriff's personnel.

Patrol Areas

Southwest Operations Division (Aliso Viejo) Observations

A member of the Grand Jury participated in the Sheriff's ride-along program in several patrol areas, including Aliso Viejo and Dana Point in order to assess the operational readiness of the unit and serviceability of equipment.

During the tour of the Aliso Viejo Sheriff's Station and the surrounding grounds, the Grand Jury noted that while an electronically operated gate provided controlled entry into the patrol vehicle parking area, the Sheriff had not separated the rear of the substation from public land by any type of wall or fencing.

A heavily wooded slope adjoins the sheriff's parking area and extends approximately 100 feet above and to the direct rear of the facility. A pedestrian pathway lies between the street and wooded area. The slope offers ideal conditions for cover and concealment of anyone intending to trespass onto Sheriff's property.

During the ride-along with an Aliso Viejo Deputy Sheriff, the Grand Jury noted that deputies, while busy in the performance of their duties, always took the opportunity to acknowledge the public in a professional, pleasant manner. The Grand Jury accompanied and observed deputies during a response to a residential burglary, a field interview of a suspicious person, and several traffic violation stops. In every case, the deputy's conduct was in keeping with the policies and expectations of the Sheriff's Department.

Southeast Operations Division (Dana Point) Observations

A member of the Grand Jury participated in a ride-along during the evening shift with a Sheriff's patrol assigned in the city of Dana Point. The Grand Jury attended the shift briefing at the Aliso Viejo station, and deputies provided a brief tour of the facility prior to departing for the assigned patrol area. As directed by the Orange County Sheriff, the evening shift deputies received training during their briefing regarding active shooter responses.

The Grand Jury observed that the deputy assigned as escort conducted a thorough inspection of her patrol unit and checked all communications equipment for serviceability and proper function. She inspected the vehicle's lighting, emergency lighting, computer equipment, radios and all channels, local and remote. The Grand Jury noted the deputy checked the computer aided dispatch system. The deputy then explained how the equipment functions.

During the patrol, the deputy stopped several vehicles for minor traffic infractions. Given probable cause for the traffic stop, she used the opportunity to check the vehicle and passengers to determine the presence or use of alcohol. According to the deputy, it is important to ensure that persons who had been consuming alcohol are not driving on the roadways. None of the traffic stops conducted yielded an intoxicated driver, but a solid police presence was established.

It is important to note that the deputy's interaction with the public was professional and courteous during every contact with civilians. The Dana Point patrol area was crowded with visitors on this particular evening because of the annual Boat Parade in the harbor. During the evening, the Grand Jury accompanied deputies to several calls. A fight at a local bar resulted in one person sustaining a minor injury. The assailant fled the scene and deputies sent the injured party to the hospital. Deputies responded to a report of a person walking in the middle of a roadway. After interviewing the individual, deputies determined that he was intoxicated and on his way home. Deputies cautioned the man to stay off the roadway, and then a deputy drove him home.

Lake Forest and Unincorporated Area Observations

A member of the Grand Jury accompanied a Sheriff's deputy on his routine patrol in the community of Lake Forest. During the course of the ride-along, the deputy had reason to conduct a traffic stop. The Grand Juror noticed that the deputy increased the volume of the speaker system inside of the patrol vehicle, which enabled the Grand Juror to hear his interaction with the public as well as observe his conduct. After several other interactions with the public, it was clear that the deputy wanted the Grand Jury to see and hear how he conducts business. The deputy made an arrest, as well as multiple stops, and in all cases, his conduct was exemplary.

Homeland Security Division

General Comments

The average Orange County resident may be unaware of one of the most important commands within the Sheriff's Department, and one that is involved every day in order to ensure public safety, the Homeland Security Division.

Throughout Orange County, the Division's personnel are dedicated to the mammoth task of intelligence collection and counter-terrorism. The Sheriff has coupled this responsibility with the division's primary role as law enforcement officers. The Division includes but is not limited to the Special Enforcement Bureau, the Sheriff's Response Team, Harbor Patrol Marine Operations, Transit Patrol and the Orange County Intelligence Assessment Center.

The Division coordinates its counter terrorism responsibility with one of 78 fusion centers located throughout the nation. These highly classified centers collect and disseminate potential terrorist threat information to all law enforcement and counterintelligence bodies at the national, state, and local levels. In addition, the Division coordinates and prepares preemptive measures, as well as responsive measures to any threat situation.

At all times the Division maintains close contact with the Federal Bureau of Investigation, the Department of Homeland Security (national level) and other United States counter-terrorist entities. The Sheriff maintains a rapid reaction force able to assemble and respond to any crisis. This includes activation of the Emergency Operations Center located at Loma Ridge, mobile command posts, and redundant dispatch systems. Two of the most highly specialized units that are part of the Division are the Explosive Ordnance Disposal Team (EOD) and the Joint Hazardous Materials Assessment Team (JHAT).

Because we live in a potentially hostile environment and have been the target of a series of successful attacks and thwarted attempts in the recent past, it is imperative that the county's first line of defense against nuclear, biological and chemical (NBC) attack be able to respond and defend against such assaults. As new destructive chemistry is developed and new delivery systems designed, Homeland Security Agencies must continually update their counter measures

and equipment, which can ensure survival in a radiological, biological, caustic environment, is available to our first responders.

Special Enforcement Bureau, Air Support Unit

General Comments

In 1984, the Orange County Board of Supervisors approved establishment of the Sheriff's Air Support Unit to improve law enforcement services in the county.

In 2005, the Air Support Unit received the first of two AS350B2 (ASTAR) helicopters. The Sheriff put the second of these into service a year later. These aircraft are capable of responding to a scene at 150 knots and remaining for more than three hours. Additionally these aircraft are able to communicate with various law enforcement and fire agencies and initiate emergency broadcasts. Equipped with a moving map Global Positioning System and a 50 million-candle power searchlight these aircraft can easily find a target area with precision.

A member of the Grand Jury experienced first-hand the capability of this aircraft by seeing the airborne patrol assist in a traffic stop with multiple suspects involved, and then provide backup support from the air until ground units arrived. A short time later, the air support crew guided a fire crew responding to an emergency through heavily congested traffic, providing them the best route to their destination.

The Air Support Unit constantly trains to adjust quickly from its primary law enforcement role to other emergency support roles. Support Unit deputies can play an important part in search and rescue operations, provide medical emergency relief, spot fires, serve as an air ambulance, or carry a Special Weapons and Tactics Team.

John Wayne Airport Sheriff's Aircraft Hangar Observations

The most recent addition to the Sheriff's Department airborne capability is a refurbished UH-1 helicopter. The helicopter, fitted with a hoist system, greatly expands the scope of the air support unit from merely patrol and observation to deployment, insertion and extraction of tactical units (SWAT). John Wayne Airport management is working with OCSD on a development plan to provide a hangar at the airport to house the two patrol aircraft and the tactical helicopter.

Sheriff's Deputies Interaction with the Citizens of Orange County

General Comments

Throughout the course of this study, the Grand Jury had the opportunity to observe numerous interactions between the Sheriff's Department and the public it serves. Observations were not limited to any specific division, rank or function, but included every level within the department's structure.

While the Grand Jury recognized that those deputies hosting Panel Members for patrol area ride-alongs or other interviews or briefings were prepared to be on their best behavior, the Grand Jury also noted that on every occasion in which deputies communicated or interacted with the public, they were truly working to project a professional image.

It is important that the public base its attitude towards law enforcement on fact rather than perception. Honesty, training and a transparent commitment to service are critical as a deputy can wipe out all of the constructive effort of the Sheriff's Department with one unintentional violation.

In August 2009, *The Orange County Register* reported a 42% increase in complaints against Sheriff's Department employees since 2008. The article further predicted another dramatic rise for the following year if the trend continued. As uncomplimentary as this report initially appeared, the article also provided information from The Office of Independent Review (OIR). The OIR stated that the probable reason for the increase in complaint figures was a 2008 change in policy that made it easier for a citizen to file a complaint. At the same time, Sheriff's staff ceased warning complainants that inaccuracies in a complaint could result in criminal charges and placed renewed emphasis on transparency (Complaints, 2009).

Also in 2009, the Sheriff's Department created a link on their web site, which gave access to anyone who wanted to file a complaint on line. This action simplified the process and allowed citizens to remain anonymous if desired. As a result, there was an obvious and expected increase in reporting of founded and unfounded issues. Additionally, deputies now receive citizen complaints and then forward them to the immediate supervisor on duty. It is the policy of the Sheriff's Department to investigate every complaint received with an equal level of importance.

COMMENDATIONS

The Grand Jury appreciates the extraordinary time and effort that the Sheriff's Department provided to coordinate the numerous events essential to the completion of this report.

FINDINGS

In accordance with *California Penal Code* Section 933 and 933.05, the 2015-2016 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 "Sheriff's Temporary Detention/Holding Areas, Patrol Areas and Special Services", the 2015-2016 Orange County Grand Jury has arrived at 11 principle findings, as follows:

- F1.** The pedestrian screening areas located at the entrances to the Central Justice Center are heavily used and become congested during high traffic times. Pedestrian crowding prevents the Sheriff's Special Officers from having an adequate view of persons entering the facility.
- F2.** The industrial/office grade partitions used in the Central Justice Center's screening areas to channel the public entering and departing the facility do not provide ballistic protection for Sheriff's Special Officers in the case of an active shooter emergency.
- F3.** There is no system for regulating or channeling the public in order to prevent crowding at the scanning stations. Sheriff's Special Officers must use verbal commands in order to maintain public order and organization.
- F4.** None of the County jail or court facilities visited uses full body scanners to prevent the public from bringing non-metallic weapons, tools or other contraband into the facility.
- F5.** The current security/surveillance camera system on the exterior of the Harbor Justice Center is not adequate and until completion of on-going upgrades, does not provide for sufficient monitoring.
- F6.** The roll-up doors located at the Harbor Justice Center do not prevent some observation of inmates arriving and departing the court by the Sheriff's transportation vehicles.
- F7.** The Command Center at John Wayne Airport uses outdated surveillance equipment.
- F8.** The K-9 office located at John Wayne Airport is in need of repair or replacement.
- F9.** The Harbor Patrol Marine Operations Bureau does not have waterproof dashboard or handheld video cameras for use at all three harbors in its patrol area.
- F10.** Adequate long-range surveillance equipment is not available to Dana Point deputies performing harbormaster duties.

F11. The outside parking/equipment staging area located at the Aliso Viejo Sheriff's Station provides inadequate protection along the rear of the enclosed area. No barrier exists to prevent unencumbered access onto Sheriff's property.

RECOMMENDATIONS

In accordance with *California Penal Code* Sections 933 and 933.05, the 2015-2016 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 "Sheriff's Temporary Detention/Holding Areas, Patrol Areas and Special Operations", the 2015-2016 Orange County Grand Jury makes the following 11 recommendations:

- R1.** The Orange County Sheriff should make best efforts to coordinate with the Court Facilities Manager no later than September 2017 to determine which space designation (County, Court, or Common) applies to points of ingress and egress at the county's courthouses to help determine fiscal responsibility for security/safety improvements. (F1, F2, F3, F4, F5)
- R2.** The Orange County Sheriff should make best efforts to coordinate with the Court Facilities Manager by January 2017 in order to develop a plan that includes objectives and funding options for providing a better system for channeling pedestrians at the points of entry for each court facility. (F3)
- R3.** The Orange County Sheriff should make best efforts to coordinate with the Court Facilities Manager by January 2017 to develop a plan to replace existing industrial/office grade partitions at the courthouse entrances and screening stations with ballistic partitions. (F2)
- R4.** The Orange County Sheriff should continue best efforts to coordinate with the Court Facilities Manager by January 2017 to support the current project to upgrade and expand the video surveillance system at the Harbor Justice Center. (F5)
- R5.** The Orange County Sheriff should make best efforts to coordinate with the Court Facilities Manager by January 2017 to plan for funding, procurement and installation of solid roll up doors at the inmate vehicle entrance to the Harbor Justice Center. (F6)
- R6.** The Orange County Sheriff should continue working with John Wayne Airport management to develop a plan by September 2017 for the funding and replacement of outdated surveillance equipment at John Wayne Airport, to include placing a redundant off-site backup system. (F7)

- R7.** The Orange County Sheriff should coordinate with the Airport Director for John Wayne Airport to develop a plan by September 2017 for the funding, and repair or replacement of the K-9 Staff Office at John Wayne Airport. (F8)
- R8.** The Orange County Sheriff should develop a plan by September 2017 to fund and equip Harbor Control watercraft with dashboard and handheld cameras contained in waterproof housings. (F9)
- R9.** The Orange County Sheriff should develop a plan by September 2017 to fund and equip the harbormaster deputies with long-range surveillance equipment. (F10)
- R10.** The Orange County Sheriff should coordinate with the City of Aliso Viejo by January 2017 to develop a plan for the funding and construction of a wall or fence along the entire rear of the Aliso Viejo Sheriff's Station facility. (F11)
- R11.** The Orange County Sheriff should develop a plan by January 2017 for the funding, purchase and installation of Full Body Scanners for each courthouse entrance. (F4)

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 County 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), detail, 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 following governing bodies within 90 days of the date of the publication of this report:

90 Day Required Responses:	F1	F2	F3	F4	F5	F6	F7	F8	F9	F10	F11
Orange County Board of Supervisors	X	X	X	X	X	X	X	X	X	X	X
City Council, City of Aliso Viejo:											X

90 Day Required Responses:	R1	R2	R3	R4	R5	R6	R7	R8	R9	R10	R11
Orange County Board of Supervisors	X	X	X	X	X	X	X	X	X	X	X
City Council, City of Aliso Viejo:										X	

Responses are required from the following elected agency or department head within 60 days of the date of the publication of this report:

Sheriff's Temporary Detention/Holding Areas, Patrol Areas and Special Services

60 Day Required Responses:	F1	F2	F3	F4	F5	F6	F7	F8	F9	F10	F11
Orange County Sheriff/Coroner:	X	X	X	X	X	X	X	X	X	X	X

60 Day Required Responses:	R1	R2	R3	R4	R5	R6	R7	R8	R9	R10	R11
Orange County Sheriff/Coroner:	X	X	X	X	X	X	X	X	X	X	X

Responses Requested:

Responses are requested from the following non-elected agency or department heads:

Requested Responses:	F1	F2	F3	F4	F5	F6	F7	F8	F9	F10	F11
Superior Court Facility Manager:	X	X	X	X	X	X					
Deputy Airport Director of Operations:							X	X			

Requested Responses:	R1	R2	R3	R4	R5	R6	R7	R8	R9	R10	R11
Superior Court Facility Manager:	X	X	X	X	X						
Deputy Airport Director of Operations:						X	X				

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APPENDICES

Appendix A: Continuity References

Entity Responding	Title	Street Address	City	Postal Code	Phone Number
Orange County BOS	CEO	333 W. Santa Ana Blvd.	Santa Ana	92701	714-834-3100
Orange County Sheriff	Sheriff	550 N. Flower St.	Santa Ana	92701	714-647-7000
Courts Facility	Manager	700 Civic Center Dr.	Santa Ana	92701	657-622-6878
Orange County Airport	Director	3160 Airway Ave.	Santa Ana	92926	949-252-5200
Aliso Viejo	City Mgr.	12 Journey, Ste. 100	Aliso Viejo	92656	949-425-2500

**CHANGING OF THE GUARDIAN:
LIFE AFTER REORGANIZATION OF
THE PUBLIC ADMINISTRATOR AND
PUBLIC GUARDIAN OFFICES**



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EXECUTIVE SUMMARY

The 2015-2016 Orange County Grand Jury took an in-depth look at the Public Guardian and Public Administrator Offices to determine whether issues found by the 2008-2009 Grand Jury report entitled, *The Guardian of Last Resort*, had been resolved. In 2008-2009, the Grand Jury found lack of financial accountability, lack of current and meaningful policies and procedures, questionable personnel administration, an outdated case management database, and unmanageable deputy caseload sizes (Orange, 2008). During the course of this investigation, the current Grand Jury found that serious problems identified in the 2008-2009 Grand Jury report continue to affect the efficiency and morale of the Public Administrator and Public Guardian Offices. Numerous staff interviews and document reviews point to a number of serious longstanding issues in both the Public Guardian and Public Administrator's Offices. Some of the concerns have become more significant over time. A few of the major findings include:

- Unfulfilled commitments to replace a 17 year old case management database used by the Public Administrator and Public Guardian Offices that is barely functional and limited in its abilities.
- Low staff morale in both the Public Administrator and Public Guardian Offices.
- Questionable hiring practices in the Public Administrator's Office.
- Ineffective leadership in the Public Guardian's Office.
- Failure to implement necessary processes to prevent and correct instances of unprofessional staff conduct in the Public Guardian's Office.

These concerns and others are individually addressed throughout the body of this report.

Despite the numerous issues that still exist seven years after they were initially identified by a previous Grand Jury, the current Grand Jury concluded that, with a few notable exceptions, the deputies who represent the Public Administrator and Public Guardian, and who are sworn to uphold the laws associated with guardianship, express a strong desire to help people who can't help themselves.

This report is intended to facilitate resolution to longstanding issues in the Public Guardian's Office first and foremost, and secondarily, in the Public Administrator's Office as it relates to hiring practices and staff morale. The Grand Jury provides a number of findings and recommendations for resolving these issues.

BACKGROUND

Imagine a workplace with morale so low one staff member refers to the Public Guardian's Office as their "own little asylum." Another indicated it wouldn't be a surprise if something tragic happened given the in-house fighting, tension, and stress level of employees. Then imagine the anxiety of daily reliance on a seventeen-year-old conservatorship database that houses case management information for thousands of conserved individuals but is in constant danger of becoming non-functional due to its outdated platform. This follows a legacy of leadership that has made newspaper headlines and people who were either locked out of, or escorted from their offices. This is the current Public Guardian's Office.

In late January, 2012, the Public Administrator/Public Guardian was locked out of his office after refusing to retire on the date that, according to the County, he had negotiated with the Board of Supervisors. This followed a lengthy period of criticism of the department including two Grand Jury reports, a claim filed against the County that accused the department of negligence in the handling of a multimillion dollar estate (Edds, July 2011).

Some staff from the Public Guardian's Office told the Grand Jury that operational problems continued under the appointed replacement who retired in March, 2014, after three years on the job, which coincided with the Public Administrator and Public Guardian separation of offices.

An Interim Public Guardian served from February 2014 through December 2015, coinciding with the placement of the Public Guardian Office under the Health Care Agency. The Interim's short tenure was compounded by the perceived notion of many staff that all decisions regarding the Public Guardian's Office were being made by the Health Care Agency/Behavioral Health Services management team, rendering the Interim Public Guardian position powerless to advocate for staff.

A new Public Guardian was appointed permanently in January 2016. Staff appears divided on this change in leadership. According to some Public Guardian employees, they are wary and distrustful of leadership in general, having been disappointed too many times, and regardless of who leads in that role, they will continue to function under the larger umbrella of what they perceive as the far-removed Health Care Agency/Behavioral Health Services. Additionally, they carry forward a well-entrenched dysfunctional legacy, so positive changes may continue to come slowly to this department.

The Public Administrator's Office fared much better in the 2014 split from the Public Guardian's Office, but it did not escape unscathed. Most notably, the current Grand Jury found evidence that Merit Selection Rule guidelines were not followed when management hired extra help to catch

up on outdated caseloads. The Grand Jury also found evidence that staff morale was adversely affected by the hiring of people who had a known relationship with top District Attorney Officials.

The Public Guardian and Public Administrator Offices have distinct functions. The Public Guardian's Office employs approximately 40 employees, with approximately 24 deputized employees. This compares to the Public Administrator's Office, which employs approximately 20 staff, with approximately nine deputized employees. According to interviews with senior staff members, being deputized gives an employee authority to perform investigative and administrative duties under the jurisdiction of the Public Guardian and Public Administrator, including managing the affairs and arranging for care and treatment services. According to the Class Specifications for Public Guardians, dated February 5, 2016, positions in this series perform a wide variety of activities and services to fulfill the legal mandates of the Public Guardian. They are responsible and accountable for performing investigations related to conservatorships and for managing the estates of conservatees determined by the courts to fall within the jurisdiction of the public guardian.

The Public Guardian's Office attends to the welfare of County residents who do not have the capacity to take care of their own needs and have no one else to look after them, or who have a mental illness so acute that they are unable to function independently. The Public Administrator's Office, on the other hand, manages estates of individuals who die without a will or without an appropriate person willing or able to act as the estate administrator. The Public Administrator/Public Guardian Offices manage over \$46 million of combined cash assets and they process approximately 60,000 financial transactions for all programs annually (Orange, 2015).

In the 2005 reorganization, the Public Administrator, then an elected position under the Coroner's Office, absorbed the responsibility of Public Guardian, making it one fulltime shared position. However, in February, 2014, the Board of Supervisors initiated another reorganization. They determined that the Public Administrator/Public Guardian role would be separated into two distinct fulltime positions that would function under separate umbrella departments. The Public Administrator relies on a fulltime Chief Deputy to manage day-to-day operations, while the Public Guardian utilizes a team of mid-level managers and supervisors (refer to Appendices A, B, and C for Organization Chart information).

The Public Guardian position is appointed by the Orange County Board of Supervisors and reports to the Director of the Health Care Agency. The Public Guardian's Office receives approximately 800 referrals and administers approximately 1,600 conservatorship and trust cases annually. Day-to-day caseload duties are assigned to approximately 19 Deputy Public Guardians, who each have an approximate caseload of 60 clients. Their work is monitored by three immediate supervisors and one mid-level manager. Deputies are responsible for

individuals who are either under Lanterman-Petris-Short (LPS) or Probate conservatorship. LPS conserved individuals are deemed gravely disabled due to mental illness. Probate conserved individuals are generally referred for services by Adult Protective Services, local law enforcement agencies, and the Superior Court when persons (usually elderly and/or disabled) are unable to care for themselves. Each case may remain open for several years, depending upon the severity of the physical and/or mental disability of the person. In some instances, Deputies are only responsible for the estate, while in others, their responsibilities include care for the person's well-being, which includes finding them a safe and comfortable place to live.

Conserved individuals are particularly vulnerable and depend upon the integrity and competence of the Deputy Public Guardians to keep them physically and financially safe, and ultimately ensuring their estates are legally, ethically, and appropriately handled after death.

The Public Administrator is an elected position, and has been assigned to the District Attorney. The Public Administrator Office receives an average of 1,300 referrals, handles approximately 1,000 investigations, and administers an average of 150 decedent trust estates annually. A Chief Deputy Public Administrator, appointed by the District Attorney, oversees the operations of the Department. Day-to-day caseload duties are assigned to approximately six Deputy Public Administrators, who are responsible for making a diligent search for the next of kin, a will, and arranging any documents for the disposition of the decedent's remains. Deputies are monitored by two tiers of supervisors and the Chief Deputy Public Administrator.

The 2014 separation resulted in the Public Guardian's Office being absorbed into the massive Health Care Agency under the sub-department of Behavioral Health Services. The Public Administrator's Office was moved under the much smaller auspices of the District Attorney (refer to Appendices A, B and C for Organization Chart information). Early in 2015, the Public Administrator operations physically moved from an office building it shared with the Public Guardian's Office to the District Attorney's Office building. The Public Guardian operations did not move into the Health Care Agency building, but remain isolated in a building several miles away. Some staff members from both the Public Guardian and the Public Administrator Offices expressed feelings that the Public Administrator got the better deal, including relocation of Real Property and Estate Inventory staff to their office, although these entities still provide services to both offices and are heavily relied upon by the Public Guardian staff.

PAST GRAND JURY REPORTS

The Grand Jury previously investigated the Public Administrator/Public Guardian Office in 2008-2009 in a report entitled *The Guardian of Last Resort*. This report included a separate,

supplemental report which dealt specifically with increased management costs and additional inappropriate personnel practices. Although there were many unsettling findings, the incumbent Public Administrator/Public Guardian strongly defended his leadership of the agency. In his rebuttal, he “wholly disagreed” with several of the Grand Jury’s findings, which included the following two unresolved issues:

1. “The management of Public Administrator/Public Guardian has become top heavy, which complicates communication with employees, increases costs and lowers morale and department performance.”
2. “Public Administrator/Public Guardian policies and procedures are outdated, confusing and are not being adhered to as written, making it difficult to effectively implement the Public Administration/Public Guardian stated mission.” (Orange, 2008)

The 2011-2012 Grand Jury revisited the Public Administrator/Public Guardian with a report entitled, *Elder Abuse: The Perfect Storm*. Two relevant recommendations were made that were pertinent to the Public Administrator/Public Guardian Office.

1. By October 1, 2012, the Board of Supervisors should direct the Office of Performance Audit Director to evaluate...the Public Guardian.
 - a. 2016 update per the County Executive Office (CEO): The Office of the Performance Audit Director has not conducted an evaluation of the Public Guardian.
2. By October 1, 2012, the County Executive Officer should direct the Information Technology Department to evaluate the computer system of the Public Administrator/Public Guardian to insure this agency has a full capacity to report, coordinate and monitor elder abuse (Orange, 2011).
 - a. 2016 update per the County Executive Office (CEO): The Health Care Agency released a Request for Proposal (RFP) for replacing the case management computer system in February 2015. The RFP was cancelled in November 2015, due to lack of acceptable bids. The Health Care Agency will continue to explore options for replacement of the case management computer system, which may include the issuance of another RFP.

SCOPE

This report focuses on the six current issues the Grand Jury feels have the most significant impact on the ability of the Public Administrator and Public Guardian Offices to effectively and efficiently carry out their duties.

1. Public Guardian Leadership and Employee Morale
2. Public Administrator Leadership and Employee Morale
3. Public Administrator and Public Guardian Electronic Case Management System
4. Public Guardian Training and Certification
5. Public Guardian Policy and Procedures
6. Public Guardian Quality Assurance Activities

METHODOLOGY

In preparation for this study the Grand Jury researched information using a variety of investigative techniques, including interviews and document reviews. Interviews were conducted with a wide variety of well-represented entities in both the Public Guardian and Public Administrator Offices, from deputies who perform the day-to-day caseload functions to top officials in the Health Care Agency and District Attorney's Office. The Grand Jury feels this well-rounded staff representation provides an objective and accurate portrayal of the agency's culture, inner workings, issues, and solutions. The Grand Jury also interviewed staff and reviewed documents from other County entities who work with these two groups.

Interviews were conducted with:

- Staff associated with the Public Guardian and Public Administrators Offices
- Staff from the District Attorney's Office
- Staff from the Health Care Agency
- Staff from both Centralized Human Resources and District Attorney Human Resources Offices
- Staff from Information Technology (IT)
- Staff from the County Executive Office (CEO)
- Staff from the County's Internal Auditor Office

- The California Association of Public Administrators/Public Guardian/Public Conservators (CAPAPGPC) and review of associated documents

Documents reviewed included:

- Previously published Grand Jury reports
- Internal County audits related to the Public Guardian/Public Administrator
- Human Resource policies related to hiring practices
- Internal District Attorney recruitment and hiring documents
- County documents related to Employee Appraisal processes and Performance Improvement Plans
- Current Public Administrator/Public Guardian policies and procedures
- Documents related to deputy training and certification requirements
- Documents related to procurement attempts to upgrade the current electronic case management database system (E-CMDS)
- Research articles related to the Public Administrator/Public Guardian

INVESTIGATION AND ANALYSIS

PUBLIC GUARDIAN LEADERSHIP

Effective leadership is fundamental to ensure the vision and mission of an organization is successfully met and that it fosters an environment where an agency can thrive. Unfortunately, this has not been the story for Orange County's Public Administrator/Public Guardian Office, which has been in a constant state of transition.

In February 2014, the Board of Supervisors placed the Public Guardian's Office under the auspices of the Health Care Agency, concurrent with the appointment of an Interim Public Guardian. After what some staff described as an initially warm reception by the Health Care Agency/Behavioral Health Services leadership team, which included promises of additional funding and increased resources, many Public Guardian staff were left disappointed. They reported that the reforms resulted in increased red tape, a reduction in basic office equipment, and a neglected workforce. Several Public Guardian staff members described themselves as the stepchildren of the Health Care Agency and their direct supervising department, Behavioral Health Services, stating that the top leaders of the organization have yet to make a second appearance to the office since the initial welcome speech. In addition to Behavioral Health Services, the Health Care Agency consists of smaller departments which, in part provide direct care clinical services. In sharp contrast, the Public Guardian's Office fulfills a primarily

fiduciary function and must follow strict Probate Codes. This difference in focus adds to the perceived disconnect between the Public Guardian and most other Health Care Agency departments. Some Health Care Agency officials told the Grand Jury that they did engage with the Public Guardian staff during staff meetings and a luncheon event to bring the Public Guardian's Office into the organization, but conceded that the office hasn't yet been fully integrated into the Health Care Agency.

At the beginning of 2016, a permanent Public Guardian was appointed by the Board of Supervisors, replacing the Interim Public Guardian who had been in place for 22 months, leaving the Public Guardian staff to adjust to yet another new leadership style. This revolving door approach makes it challenging to achieve balance in an environment that provides critical support to some of Orange County's most vulnerable citizens. According to some staff, the lack of consistency as each new Public Guardian comes in armed with their own unique vision, philosophy, priorities and rulebook is evident. The agency is left dealing with antiquated case management systems, extreme personality conflicts, a mix of over-inflated and ineffective mid-level management positions, and no effective internal system in place for measuring deputy compliance with strict probate codes and other expected workplace standards.

It is apparent to the Grand Jury that the leadership history within the Public Guardian's Office has created a workforce left to their own devices. One top official in Orange County government told the Grand Jury that the Public Guardian's Office is almost unsalvageable in its current state. Senior staff at the Health Care Agency/Behavioral Health Services told members of the Grand Jury that they have made a commitment to Public Guardian staff that they will provide a stable foundation for the recently appointed Public Guardian to make a smooth transition with the least amount of disruption.

In conducting its investigation, this Grand Jury explored several critical components under the leadership banner, including Public Guardian staffing, Public Guardian performance management, Public Guardian staff morale, Public Guardian communication, and integration of Public Guardian staff into the Health Care Agency.

Public Guardian Staffing

Staffing in the Public Guardian Office has been an ongoing issue since at least 2008-2009 according to a previous Grand Jury investigation entitled *The Guardian of Last Resort*. Listed below are a few of the issues identified seven years ago, along with the current Grand Jury's observations:

2008-09 Recommendations	Public Guardian's Response	2015-16 Observations
<p>The PG should comply with the OC Human Resources request and eliminate the Administrative Manager Level III classifications at the PG.</p>	<p>The PG will work with Human Resources to determine an appropriate administrative management classification structure for PG within the next 6 months.</p>	<p>The Public Administrator/Public Guardian are now separate agencies thus requiring the need to duplicate Administrative Manager Level III positions. The PG continues to have one additional Admin Manager III, who reports to PG. This position is currently under review by Centralized Human Resources.</p>
<p>The PA/PG should reduce the number of management positions in the Administrative Services Department.</p>	<p>Recommendation will not be implemented because it is not warranted or reasonable. The three Managers in the Administrative Services Unit all perform necessary duties which include Human Resources, Procurement, Payroll, Information Technology and Facility/Operations.</p>	<p>Centralized Human Resources assessed and is addressing the management positions identified in 2008/09 for reclassification. In addition, a member of the leadership team shared that more resources are now available to the PG under the auspice of HCA, such as payroll, budget management, personnel and billing.</p>
<p>The PA/PG should perform an in-depth top-to-bottom review of all communication systems. Develop a corrective action plan and review monthly with senior management staff.</p>	<p>This recommendation has been implemented. Communication methods are in place. There are general staff meetings, unit meetings, supervisor meetings and management meetings. Labor Management committee meetings, training and email blasts that all occur within PA/PG.</p>	<p>There is a general perception among most PG staff that communication from the top down continues to be an issue, stating that meetings are unproductive and lack purpose or direction. The Grand Jury reviewed the Public Guardian staff meeting minutes and determined that meetings appear to occur monthly and cover relevant topics.</p>

Some of the current Public Guardian staffing issues were inherited, including the questionable management promotions revealed in the 2008-2009 Grand Jury report. Some are a result of cumbersome hiring practices, while others stem from simply not having the right people in the right positions.

The 2008-2009 Grand Jury report revealed that Public Guardian management positions were created without justification and temporary promotions were awarded. Three mid-level managers were temporarily promoted. Although their terms were supposed to be extended no longer than eighteen months, due to lack of proper oversight they have remained in place under the temporary status for 5-7 years. The appointment of these positions did not escape the notice of the Public Guardian deputies. As noted in the 2008-2009 Grand Jury report, and confirmed by numerous staff members, titles and promotions were not only subjective and unnecessary but resulted in an agency that was top heavy with managers. This resulted in an insufficient amount of line staff to manage the conservatorship caseloads, which quickly escalated into a backlog of outdated, unresolved cases. One Public Guardian management position, currently staffed by a “temporary” manager, is not assigned to supervise any staff. Although that position is in an administrative support role for the deputies, several staff members in the Public Guardian’s Office aren’t aware of the job duties assigned to that position. Additionally, one official in the Public Guardian Office opined that several mid-level Public Guardian managers are often late, disappear, don’t answer e-mails, or simply don’t show up when expected. The official stated that despite alerting top level management to these issues, none of the issues have been acted upon.

Health Care Agency/Behavioral Health Services leadership has addressed the staffing imbalance and is still working to resolve the excess of middle management issues. One position was reclassified in late 2015, a second position was reclassified in early 2016, and a third position study is underway as of the writing of this report. Additionally, the Human Resources Department has changed the practice of granting temporary promotions for an extended length of time. The Human Resources policy entitled *Temporarily Filling a Position*, which was effective as of April 2010, now reads, “Temporary position classifications of full-time positions should be limited to nine months and cannot be extended.”

The Grand Jury learned that other staffing issues in the Public Guardian’s Office stem from the agency’s inability to replace vacant positions in a timely manner. Positions have been left unfilled for months, and for more than a year for a much needed social worker position. Due to the approval, funding, recruitment, selection, and background check processes, any hiring request becomes a lengthy process. The recruiting process for the vacant Social Worker position began in late 2015 even though this is an essential position to assist the deputies with mandated visits to check on the physical and emotional welfare of people on probate conservatorship. Some deputies reported that due to the lack of a social worker, site visits are not being completed in accordance with established policy because the deputies have had to assume this duty and do not have time in their schedule to comply. Another example of staffing delays is that of a long vacant office receptionist position. Other staff have been pulled from their primary tasks to cover this position, creating an increase in their workload to ensure all assignments are completed within the department. Key deputy positions have also been vacated with no recruitment efforts to fill those positions, creating an added burden to existing deputies by adding

to their already full caseload. This imbalance results in less service time spent on each conserved individual.

The Interim Public Guardian who served from March 2014 through December 2015 was charged with bringing greater stability, structure and direction to the embattled and struggling workforce of the Public Guardian Office. Many Public Guardian staff members said the Interim made an effort to increase communication via staff meetings and one-on-one conversations. Documents provided to the Grand Jury also showed that the Interim initiated the arduous process of reviewing and updating the Public Guardian Policies and Procedures Manual that had been left in disarray. Several staff in the Public Guardian's Office were of the opinion that the Interim was given the title without the authority, due to the multi-layered oversight structure of Health Care Agency/Behavioral Health Services. This may have impeded a successful transition from the start.

Based on a number of staff interviews, it is clear to the Grand Jury that there is a strong perception among some staff that a few personnel in the Public Guardian's Office are not well-suited to be in leadership positions. The Grand Jury was told about and observed examples of high ranking Public Guardian staff who lacked effective communication skills, regularly participated in and even initiated office gossip and drama, misused power through blatant favoritism, and regularly elected not to adhere to established policies and procedures.

Public Guardian Performance Management

There is a well-documented and comprehensive Performance Incentive Plan (PIP) Manual used throughout the County Government that outlines the elements of core competencies, performance planning, coaching feedback, final review, timelines and improvement plans. However, the Grand Jury identified both non-adherence to performance appraisal guidelines and lack of disciplinary action as weaknesses within the Public Guardian's Office. According to an interview with a top administrator, Human Resources staff met with mid-level managers and supervisors early on to review performance appraisal expectations, but there is no evidence of follow-up by the Health Care Agency or Public Guardian leadership to ensure the expectations were implemented. Several staff interviewed by the Grand Jury confirmed that performance appraisals in the Public Guardian's office are an ineffective tool for providing feedback of work performance.

The Grand Jury was also provided with Public Administrator/Public Guardian Policy 1.12 related to Performance Evaluation, however, this policy was not included in the Table of Contents for the Public Guardian Policy Manual and the Grand Jury learned it has been purged. The purpose of Policy 1.12 was to establish uniform guidelines for evaluating employee

performance in a fair, consistent, and objective manner within appropriate timelines. The deleted policy also emphasized the need and importance for evaluating employees based on the quantity and quality of work performance. This policy would be beneficial for managers and supervisors as a guideline when preparing for and meeting with staff to review performance objectives.

The Grand Jury found few aspects of the Public Guardian's Office to be consistent or objective. According to some supervisors and deputy staff interviewed, performance appraisals are meaningless. One staff member stated there has been very little verbal communication with the direct supervisor due to ongoing conflicts and that a performance appraisal consisted of looking at each other, the supervisor reading the appraisal, which had no negative comments, then both of them getting up and walking out of the room. Another official stated that an Improvement Plan section was not included as part of the Performance Appraisal form, which limited the opportunity to provide the employee with meaningful feedback on performance issues.

The Grand Jury was also told by several supervisors that there was no formal policy for progressive discipline, yet the Grand Jury was provided with the County of Orange Disciplinary Process Manual, which includes specific progressive steps of discipline. The Health Care Agency published a Code of Conduct Guide in October 2015 that provides employees with information on the Health Care Agency's mission, vision, and core values, along with specific instructions for preventing fraud, waste, and abuse. Clearly, there is a disconnect regarding available resources and some of the Public Guardian's staff willingness or ability to utilize these resources.

Given the unprofessional conduct that some staff states is commonplace in the Public Guardian's Office, clear communication between managers, supervisors, and deputy staff should be of paramount concern, yet Grand Jury interviews paint a picture of some supervisors and managers who are either too timid or feel powerless to address poor staff performance. Several staff in leadership roles stated that it is futile to apply progressive discipline because there is no follow-through and no consequences, they don't have the time required for documentation of poor performance by deputies, or they fear retaliation by employees. On the other hand, some deputies wonder why poor performing peers, or peers that demonstrate unprofessional conduct are allowed to continue their behavior because their negative attitude and performance affects the entire office. Examples of purported staff misconduct told to the Grand Jury during staff interviews include a staff member threatening to run another staff member over with a car, a subordinate threatening and intimidating a supervisor, an employee yelling at a conserved individual over the phone, and blatant favoritism that results in inequitable delegation of work and easier caseloads for some deputies.

A critical tool used by supervisors to gauge performance is the required Case Administration Review. These reviews ensure individual case administration is up-to-date, organized, and meet

the mandates of the applicable statutory codes. While some of the supervising deputies acknowledge that Public Guardian Policy 10.1 Supervisor Review of Cases should be followed, they also stated that they had no opportunity for input on this policy and there is simply no time in their day to conduct this task. Some of the supervisors did state that they have makeshift methods of tracking deputy performance, accolades, and suggestions for ongoing professional growth. The information gathered throughout the year is used in Public Guardian deputies' annual performance appraisals. To aid in this area, a top official told the Grand Jury that Human Resources recently conducted meetings with the Public Guardian managers to review performance appraisal standards and expectations. Human Resources also implemented a training course for Public Guardian managers on how to write a performance review, however, there is no indication that any follow-up was completed to ensure competency or adherence to agency expectations. According to an official with the Public Guardian's Office, new requirements have recently been set by the Public Guardian for supervisors to meet monthly with staff to discuss performance, attendance, and core competencies.

Public Guardian Staff Morale

Staff morale is one factor that can greatly impact productivity and job satisfaction in an agency. Several staff members describe employee morale in the Public Guardian's Office as being at an all-time low, due in part to the incorporation of the office into the Health Care Agency structure. The lack of stability, direction, and consistent managerial competency has taken its toll and manifests itself in ways that test the limits of the agency to function as a cohesive team. The Public Guardian's Office has been described by one staff member as a "pressure cooker." According to some staff, underlying reasons include undeserved managerial promotions, lack of communication on all levels, rampant gossip and innuendo, personality conflicts and in-fighting between managers/supervisors/deputies, perceived favoritism, and inequitable workloads. One person described the environment as being so toxic that "it feels like a helmet and shield are required" every time the person interacts with other Public Guardian staff. Another admits that it wouldn't be surprising if something tragic happened given the in-house fighting, tension, and stress. The message that something is terribly amiss doesn't get much stronger than these two sentiments.

There are likely many contributing factors to the low employee morale, including relatively new leadership, dysfunctional norms developed over time, and personnel issues not addressed by supervisors and managers. Several staff members stated that morale has gotten worse since the Public Administrator/Public Guardian split and has been aggravated by a perceived disconnect from the Health Care Agency/Behavioral Health Services management. In addition, deputies have the added burden of some superiors who are setting an adverse tone by agitating situations, displaying ambiguous and ineffective communication styles, and lacking decision-making power. While these statements are based on staff opinion, and while some people in leadership

were praised for their skill, knowledge, and hard work, the fact that the same negative sentiments came from multiple sources both within and outside of the Public Guardian’s Office lends credibility to the existence and genesis of the low morale.

One additional component that contributes to low morale is a commonly held belief that even with a strong work ethic, above average performance, and high productivity, promotions are unlikely. The general perception is that “it’s who you know, not what you know.” Seemingly qualified, experienced employees are bypassed for promotion and there is no succession plan or formal mentorship program to develop staff for promotional and leadership opportunities. One employee, an exception, was provided the opportunity to participate in the Orange County Leadership Academy and found it very helpful to ongoing professional growth.

Public Guardian Communication

Effective communication between the Health Care Agency and the Public Guardian’s Office as one cohesive entity is an ongoing problem. Staff complaints are less centered on the occurrence of staff meetings but rather that those meetings are not effective in producing reasonable answers to questions, solutions to issues, and actions that result in positive change. A number of employees have been unhappy with the changes instituted by what they view as a bureaucratic Health Care Agency and are struggling to adjust, while others claim that leadership simply doesn’t listen or is unresponsive because the chain of command is missing some links. Some staff expressed concern that they do not feel supported by management and that they are receiving ambiguous direction, resulting in a closed-off rather than transparent leadership team. One staff member did not feel supported by the direct supervisor, and even after mediation for ongoing issues between the two of them, they continue to barely speak to one another, using emails as their primary form of communication.

Many Public Guardian employees acknowledged that staff meetings are now occurring on a monthly basis, as requested, but that those meetings often become unproductive forums for venting, quickly turning into uncomfortable and even ugly confrontations. Many interviewees reported to the Grand Jury that staff meetings often had no agenda, little preparation or organization, and were not well-received. The Grand Jury was provided staff meeting minutes which demonstrate that relevant Public Guardian topics are discussed, but the minutes didn’t convey the morale and tone of the meetings that was expressed during numerous staff interviews. Many staff members interviewed stated they do not have access to minutes of staff meetings as they are not distributed or posted anywhere. Several Public Guardian staff told the Grand Jury that some of the Public Guardian managers are not good communicators, in or out of meetings, and that it causes anxiety in the staff as they don’t receive clear direction on important issues, leaving them to their own devices.

The most blatant example of communication breakdown is the reporting structure of the Lanterman-Petris-Short (LPS) unit supervisors and their assigned deputies. LPS deputies assist conserved individuals who are deemed gravely disabled due to mental illness. They are currently split into two sections, each consisting of 7-8 employees reporting to two different supervisors, even though their functions are identical. Over time, a significant lack of cohesion has developed between the groups. Rather than joining forces to implement best practices, offer support, and share resources, they function as two completely independent units, which has, along with other factors, resulted in an atmosphere of pitting one set of deputies against the other.

Additionally, numerous staff members reported that some employees with significant responsibilities are at odds with one another. According to one staff member, this conflict results in multiple interpersonal relationship issues throughout the office. Public Guardian management is well-aware of this antagonistic situation and according to some staff, they have elected to ignore it. What began as a simple difference in leadership style has become one of the root causes of conflict, low morale, unhealthy competition, and adversarial relationships in the agency. Clearly this is a problem that has gone unaddressed too long and a sensible resolution is long overdue. The Grand Jury spoke to a Public Guardian official who is very much aware of this ongoing issue and this person assured the Grand Jury a plan is in place to correct the situation. At the time of this interview, the plan had not yet been implemented.

Public Guardian Integration into the Health Care Agency

The Public Guardian's Office was absorbed into the Health Care Agency on short notice and with little explanation after a decision to split the Public Guardian from the Public Administrator was made in 2014 by the Board of Supervisors. The Grand Jury was told by a member of the Behavioral Health Services leadership team that their responsibility was to provide oversight only as it relates to budget and human resources, not to tend to the daily operations of the Public Guardian's Office. When the Public Guardian's Office was absorbed by the Health Care Agency/Behavioral Health Services, many Public Guardian staff found themselves needing to acclimate quickly and follow new protocols set by their new parent agency. Several Public Guardian employees told the Grand Jury they feel more like a burden than an asset to the Health Care Agency, and that they don't fit in. However, members of the Health Care Agency leadership team told the Grand Jury the change was not completed in a vacuum and that they worked closely with the Public Guardian management team to bring the organization on board. They also explained that coming to the Health Care Agency meant the Public Guardian's Office had to come into compliance with County regulations that may not have been firmly enforced prior to the move. This difference of perspective did not help ease the transition.

From a budget perspective, many staff members recalled the initial message given by the Health Care Agency leadership was that the Public Guardian's Office would have the budget to meet its needs. Since then, however, many staff members of the Public Guardian's Office say they have been advised there is no money available to them and their budget is in the red. An official with the Health Care Agency/Behavioral Health Services stated that Public Guardian's Office has its own budget that can't be intermingled with other budget money within the Health Care Agency/Behavioral Health Services. According to many staff, every time the Public Guardian's Office asks for money for purchasing they are denied, even for items as basic as chairs and printers. One staff member shared that the Health Care Agency considered removing some of their individual printers and scanners, claiming it is more cost effective for them to share a network printer. Public Guardian deputy staff scan and print documents all day long. Many of these documents are sent to the courts. A shared network printer would hamper their ability to do their basic job functions in an efficient manner. Additionally, when equipment breaks, it usually takes several days for repair. According to several Public Guardian staff this is another example of how out of touch the Health Care Agency is with their needs and day-to-day work tasks. The Health Care Agency leadership shared with the Grand Jury that after a routine review of expenses and needs, they decided not to make changes to Public Guardian printers and scanners. The potential for imposition of onerous Behavioral Health Services decisions that may adversely affect Public Guardian staff work processes underscores the existing mistrust.

Some Public Guardian staff stated during interviews that the separation of the Public Administrator/Public Guardian was necessary in order to establish an adequate infrastructure that was previously missing. Others believe the separation of the Public Administrator and Public Guardian Offices was a waste of money given the expense of duplicative entities (Chief Deputy Public Administrator and Public Guardian), as well as demoralizing to the Public Guardian Office because they feel they are not a good fit for this department. The Health Care Agency leadership told the Public Guardian team they could tap into the resources and funding of the Health Care Agency and that money would not be a problem, but according to some Public Guardian employees, no resources have been forthcoming. The Grand Jury learned that the Health Care Agency/Behavioral Health Services has provided additional administrative resources to the Public Guardian's Office, including payroll, budget management, and medical billing. An investment company has also been hired to consult with and train deputies to better manage estates. A new vendor is in place to review complex tax and trust issues.

Certain staff members from the Public Guardian's Office expressed concern that the Health Care Agency does not understand the fiduciary structure, the probate code, and the legal nature of the Deputy Public Guardians' job functions. In addition, there is a belief among several Public Guardian staff that the District Attorney's Office dictated the terms of the split, handpicked the best and the brightest when they separated, and stripped the Public Guardian's Office of much of its talent.

With any merger comes the anxiety of new leadership, budgetary concerns, a change in priorities and a change in the workforce. This merger was no different, as it occurred within a day after the abrupt exit of the previous leader. Employees of the Public Guardian's Office were left reeling after a whirlwind of changes that happened to them, not with them.

PUBLIC ADMINISTRATOR LEADERSHIP

During the course of the Grand Jury's investigation, allegations surfaced regarding questionable hiring practices in the Public Administrator's Office around the time of the Public Administrator/Public Guardian split. The concern involved staff perceptions that hiring decisions were being influenced by candidates' personal relationships with officials from the District Attorney's Office. The information raised the Grand Jury's interest in the matter and led to an investigation into the District Attorney's formal hiring procedures and practices.

At the conclusion of the investigation, the Grand Jury found evidence to support the allegations, including evidence that the District Attorney's internal Human Resources Department did not follow Merit Selection Rule guidelines when hiring extra help. The Grand Jury also found evidence that Public Administrator staff morale was adversely affected by the hiring of people who had known relationships with top District Attorney Officials.

Due to the sensitive nature of the allegations, the Grand Jury took extra caution in protecting the confidentiality of all sources. As a result, many of the details surrounding the allegations that readers may expect to see in this report are not present. The Grand Jury interviewed a wide variety of Public Administrator and other County employees and verified all documents obtained in order to present unbiased and accurate findings regarding these serious allegations.

A previous Orange County Grand Jury Report questioned hiring and promotional practices within the District Attorney's office. The 2001-2002 Grand Jury published a report entitled "*Office of the District Attorney – An In-Depth Investigation.*" Findings from that report determined the District Attorney's Office deviated from standard hiring practices, including hiring people who did not have supervisory experience commensurate with their positions, and hiring people into top positions who had a known personal relationship with Senior District Attorney Officials.

The District Attorney does not utilize the County's Centralized Human Resources Department. Elected officials have the option of using their own internal Human Resource staff. One advantage of an independent Human Resources staff is that it eliminates some layers of the approval process, allowing for vacancies to be filled more quickly. Additionally, it gives the elected official's office more discretion and autonomy in selecting candidates. Regardless of

whether the District Attorney's Office utilizes its own Human Resources or the County's Centralized Human Resources Department, the Orange County Merit Selection Rules (MSR) apply to all hiring and promotional practices.

Public Administrator Extra Help Hires

An Extra Help hire is utilized by an agency to assist with a specific project or to temporarily fill a particular role. The Grand Jury was told that Extra Help is usually applied to clerical type positions rather than specialty positions, such as Public Administrator or Public Guardian deputies, unless the specialty position is filled by someone who has retired from or previously held that position. A spokesperson for the District Attorney's Office stated it is common practice for them to hire Extra Help Deputy District Attorneys. The process for hiring temporary Extra Help for any Orange County Government Agency is simple. All that is required of the hiring authority is to complete a hiring form, write a justification for the position they wish to fill, and submit it to the County's Centralized Human Resources Department for processing. No recruitment efforts are required. This practice, although allowed within Merit Selection Rule guidelines, is an open invitation for misuse. Therefore, the District Attorney's Office should use this type of hiring sparingly, and should adhere to clear, ethical boundaries closely.

Public Administrator Merit Selection Rule Violations

The County's Merit Selection Rules (MSR) state, "Any person receiving a temporary promotion or a provisional appointment, or who is appointed to an Extra Help, limited-term or regular position, must possess the Minimum Qualifications (MQ) for the applicable class." The Merit Selection Rules contain the hiring guidelines that both the County Human Resource Services and the District Attorney's Human Resources are expected to adhere to. Choosing to deviate from this standard calls into question the judgment and motive of the hiring entity given the hiring standard protocol outlined by the County.

The Grand Jury reviewed application information against the Minimum Qualifications for the available Extra Help positions in the Public Administrator's Office. During an interview with the Grand Jury, a subject matter expert for the District Attorney's Human Resources Department affirmed there was some discretion used in the District Attorney's Office in determining if Extra Help candidates met all of the minimum qualifications. This practice is contrary to Merit Selection Rule guidelines. A subject matter expert also told the Grand Jury that the District Attorney Human Resources Department is only required to verify a candidate's degree or license, as required, in order to determine eligibility for an Extra Help position. Other aspects of a candidate's application are taken at face value and there is no follow-up by the District Attorney Human Resources Department to verify previous employment information.

Additionally, the Grand Jury was told by the District Attorney's Human Resources Department that they had concerns about one candidate's qualifications due to the type of experience listed. The District Attorney Human Resource department screened the candidate through despite this concern because they were told by the District Attorney's Office that the Public Administrator needed help quickly. The Grand Jury determined that established protocols were not followed when the District Attorney's Office used the Extra Help process without regard for Merit Selection Rule guidelines.

The Grand Jury further determined during their investigation that the District Attorney/Public Administrator's Office did not follow County's Centralized Human Resources Department protocol when an Extra Help employee was reassigned to a different position within the Public Administrator's Office. The reassignment violated Article VII, Section 1B of the Merit Selection Rules which states, "Extra Help employees are not eligible for reassignments or reductions." According to several staff interviews, Extra Help hires can be released from employment at any time, with or without cause. According to a District Attorney Human Resources Department spokesperson, employment was terminated, and the person was rehired into a new position. This explanation conflicts with evidence reviewed by the Grand Jury that strongly suggests that the person was not correctly vetted for the reassignment and that Human Resources took shortcuts during the reassignment process.

Public Administrator Personnel Administration Best Practice Violations

Staff members from the District Attorney's Human Resources Department reviewed materials submitted for an Extra Help position in the Public Administrator's Office to see if applicants met all Minimum Qualifications. The Grand Jury made inquiries as to how the minimum qualifications and previous job experience are verified. Staff responded that there is no form to validate how District Attorney Human Resources Department staff concludes that a person meets all minimum qualifications. It is a subjective process. District Attorney Human Resources Department staff does not verify past employment.

The candidates hired for the Extra Help positions, who also had personal relationships with District Attorney officials, were the only ones who submitted an application. Although this recruiting practice meets the Merit Selection Guidelines for Extra Help hires, it severely limited the candidate pool. It also created a situation in which possibly better qualified candidates were not given an opportunity to apply.

Another unintended negative consequence to the Extra Help hiring decision is that in the absence of a hiring list or advertisement for the position, persons interested in working for the Public Administrator never had the opportunity to apply. Only those who were made aware of the

position were able to take advantage of the opportunity to acquire experience that may well lead to permanent County employment.

The Grand Jury determined the new Extra Help hires were given authority that was unprecedented given the fiduciary, probate, and conservatorship training and knowledge Public Administrator staff must develop before acting independently. The standard practice for receiving added authority is a demonstrated competence in the position, as well as an earned promotion. Promotional Standards for Deputy II provided to the Grand Jury, along with staff interviews, confirmed that the first year of hire is generally a training period and that staff become deputized upon completing this training period. This gives staff time to learn more advanced skills and develop good judgment. Yet Extra Help hires, who had personal relationships with District Attorney Office officials, were afforded this privilege immediately upon hire.

According to a District Attorney spokesperson, no special consideration was given to these Extra Help hires. The District Attorney's Office felt it was prudent to deputize the new hires immediately so they could properly conduct their duties.

Public Administrator Staff Morale

The Grand Jury conducted multiple interviews with a wide variety of Public Administrator staff, from entry level deputies to top District Attorney officials. These interviews provided evidence confirming that Extra Help staff members hired in the Public Administrator's Office indeed had personal relationships with Senior District Attorney Personnel. The Grand Jury also found evidence to suggest that these individuals were given preferential treatment based on those relationships, as evidenced by the deference demonstrated toward these individuals with respect to hiring, supervision, and mobility within the Public Administrator's Office. Deviation from standard hiring practices has created tension, apprehension, and a sense of resignation in the Public Administrator's Office.

Morale was adversely affected when the decision was made to bring in Extra Help without most staff members' knowledge. Senior District Attorney/Public Administrator personnel stated during interviews that staff had requested help as a high priority to close long-standing cases. Some staff, however, stated they did not think the extra help was necessary and it took valuable time away from their duties to invest in the training of temporary staff members who could be released from service at any time. Additionally, several staff members discovered almost immediately that the new Extra Help had personal relationships with District Attorney Officials, which left them feeling they had to be careful with their interactions. Some staff also felt pressure to treat individuals with personal relationships with District Attorney officials

differently, which included not correcting these individuals on Public Administration policy implementation, as well as a hesitancy to advise their supervisor of any observations on office decorum lapses, or uncomfortable personal interactions that may have occurred.

This feeling to proceed cautiously played out when a staff member who had a known personal relationship with a senior District Attorney official, and who was still in an early training stage with the Public Administrator's Office, was promoted past several levels of regular and supervisory positions to a management position. The Public Administrator staff who were still providing basic training to this person found themselves in the position of receiving high level direction from this new person. The promotional position awarded would normally take many years to achieve, with selection based on leadership, performance, interpersonal skills, and technical knowledge of laws and process intricacies. Not only did this appointment lead to a permanent position with the County, it came with a significant pay increase and all the benefits associated with permanent County employment.

Other employees with years of experience were also candidates for this position. In fact, they had to go through the entire recruitment and interview process twice. The first recruitment effort included only County employees. After all candidates had been interviewed, the recruitment was nullified because one of the applicants was determined not to be a County employee. Instead of simply excluding that person as a candidate, the process was re-initiated to include out-of-County applicants. Everyone who had previously applied had to resubmit documents and go through an additional interview. This open recruitment allowed the person who was eventually awarded the position to apply.

The hiring and promotional decisions that give the appearance of being motivated by personal connections with officials in the District Attorney's Office have been a blow to staff morale and left many employees feeling undervalued, with few opportunities for advancement and recognition. It also affirmed for them that they might get passed over for promotions based on merit, in favor of individuals with personal connections to District Attorney Office officials. A spokesperson for the District Attorney's Office stated that no one on the interviewing panel was aware that the candidate who was selected had applied until the actual interview was conducted. Furthermore, this spokesperson stated that this candidate was selected on experience and ability to answer questions knowledgeably and comprehensively. A spokesperson also said this interviewer did not participate in the final selection. However, the Grand Jury determined the final selection was influenced by the interviewer's scoring. Additionally, the interviewer who ultimately made the hiring decision was a subordinate of the District Attorney official who knew and interviewed the candidate awarded the position.

PUBLIC ADMINISTRATOR/PUBLIC GUARDIAN CASE MANAGEMENT SYSTEM

An electronic case management database system (E-CMDS), designed for Public Administrator and Public Guardian functions, is used to perform essential fiduciary services. The system tracks millions of dollars in estate funds, facilitates court hearing preparation, processes hundreds of standard legal documents and judicial forms, assists with benefit processing and manages copious legal, placement, health, property and financial information for people who are dependent upon the Public Administrator and Public Guardians for their estate management (Case Management, 2005)

Both the Public Guardian and the Public Administrator utilize E-CMDS to meet their legal obligations and to manage the vast amount of data required for case management and accounting needs. This 17 year old case management system was introduced to the Public Administrator/Public Guardian in 1999 and little has been done to enhance its original capabilities, while staff’s dependency on E-CMDS has increased. The most significant improvement to date was the addition of a back-up system to help prevent loss of valuable case management data. This improvement corrected a severe system risk but provided none of the capability upgrades needed.

While the Public Administrator/Public Guardian has promised total system replacement and upgraded applications on many occasions, neither of these promises has yet to be fulfilled.

2008-09 GJ Initial Findings/Recommendations	2008-09 PA/PG Response	2015-16 GJ Observations
<p>The current E-CMDS computer program is no longer supported by the software supplier and is inadequate for its intended task. Implementation of a replacement system, recommended by a County Internal Audit in 2005 is severely delayed and is now scheduled for release in 2009.</p>	<p>The PA/PG agrees with this finding. The E-CMDS replacement project is a top priority for the PA/PG Office. The new system being developed is a complex software application that integrates the financial asset and case management functions of the office. PA/PG has been working collaboratively with the CEO/IT, who is the project manager, to expedite implementation. PA/PG is very happy with the services being provided by CEO/IT. A steering committee is in place</p>	<p>The new E-CMDS replacement project has not yet been implemented to date, and as of the writing of this report there is no formal plan in place to expedite implementation. Additionally, the CEO/IT is no longer the project manager and the steering committee disbanded after the writing of the 2008/2009 report.</p>

2008-09 GJ Initial Findings/Recommendations	2008-09 PA/PG Response	2015-16 GJ Observations
	that reviews the progress on a monthly basis to ensure the success of the project.	
The lack of business metrics used to measure the effectiveness of PG internal operations and its delivery of those services described in their mission statement makes it difficult to manage and continuously improve agency operations.	The PA/PG partially disagrees with this finding. The current computer system was not designed as an expandable program, nor is it able to produce reports of any great value. The new computer system, which will roll out in February 2010, provides an upgraded application that will document the standards and measure the effectiveness through a comprehensive report structure. Until implementation of the new computer system, manual measurements are in use.	There continues to be a lack of business metrics to measure the effectiveness of internal operations. There is a complete lack of structured quality assurance or quality improvement activities.
The PA/PG should immediately form an independent task force reporting directly to the Agency head to develop and launch the E-CMDS replacement program.	The recommendation has been implemented. The “task force” currently exists in the form of a steering committee that is comprised of the PA/PG, the County information Technology Officer, the CEO Project Management Office and staff who are involved on a daily basis with the project. The committee meets once a month to review the progress of the project.	This committee has been disbanded. The PG and PA may be pursuing separate options to replace E-CMDS.
From outside the PA/PG organization, the PA/PG should assign a professional information technology (IT) individual with strong business management experience. This individual would head the task force identified in recommendation	The recommendation has been implemented. The County Project Management Office has an individual who is serving as the Project Manager for this project. This individual does not “head” a task force but is a primary participant in the steering	The PA/PG has an E-CMDS Project Manager, who also provides all support to the current E-CMDS system. He has done an admirable job keeping the current system running despite the program’s severe limitations. He has also been involved in trying to

2008-09 GJ Initial Findings/Recommendations	2008-09 PA/PG Response	2015-16 GJ Observations
3a during development, trials and conversion to the replacement system.	committee.	move RFPs forward to replace the current E-CMDS system.
In 2005, the County Internal Auditor recommended a new software system for the PA/PG. It missed several self-imposed implementation deadlines, including June 2008, and will miss the deadline of July 2009. The current management staff has been unable to implement a new computer software system in a timely and reasonable period.	The PA/PG wholly disagrees with this finding. The IT project is moving forward under the supervision of CEO IT with the full and complete cooperation of the PA/PG.	As of the writing of this report, the E-CMDS project is at a complete standstill. CEO/IT is no longer involved in the project. Responsibility has been transferred to HCA for a joint case management system involving the PA and PG, however, the PA has indicated that they may be initiating their own plan for a case management database system, without the partnership of the PG.
By October 1, 2012, the County Executive Officer should direct the Information Technology Department to evaluate the computer system of the Public Administrator/ Public Guardian to insure that this agency has full capacity to report, coordinate and monitor elder abuse.	<p>March 2013 update: Upgrade of the Public Guardian computer system is going to RFP by February 2013. System selection will be done by June 2013, pending budget and Board of Supervisor approval.</p> <p>November 2015 update: In a document provided to the Grand Jury via the County Executive Office (CEO), the following update was provided: The Office of the Public Guardian (PG) was moved to HCA in February 2014. HCA released an RFP for the PG computer system on February 18, 2015, with proposal submitted that was deemed unacceptable by the evaluation panel. The RFP was cancelled on November 9, 2015. HCA will continue to</p>	The November 2015 update from the CEO in the column to the immediate left accurately describes the state of the PA/PG computer system.

2008-09 GJ Initial Findings/Recommendations	2008-09 PA/PG Response	2015-16 GJ Observations
	explore options to update the computer system, which may include issuance of another RFP.	

Given the enormous amount of information stored in a database that operates on an antiquated DOS system, the Grand Jury was especially troubled to hear a number of staff who depend on E-CMDS use words like exasperating, nightmarish, and horrifying to describe the current state of the system. There is a general sense of impending doom among users that E-CMDS is near its breaking point and no viable back-up plan exists. Deputies report constant freezing of the program, creating an endless cycle of logging back into the system, itself a time consuming process. At times several staff have been told to log off the system immediately, or limit the amount of scanning because E-CMDS was “close to crashing.” On its best days the system is slow and only one employee can access a specific case file at a time. If someone else needs to access the same case file they must either wait, or investigate who is currently accessing the file and ask them to close it. Sometimes the system shuts down completely for hours and even full workdays. The Public Administrator deputies are further hampered since their physical move from the Public Guardian’s Office several months ago. They must log on remotely, because the server is located with the Public Guardian’s Office. The remote log-on system has proved unreliable and time-consuming on top of an already unreliable and time-consuming process.

The issues listed above are inconvenient and inefficient by any standard, but numerous staff have become so resigned to these constant delays and interruptions that they accept them as part of their daily business processes. Some staff report using a dual system, one electronic, one handwritten into a caseload file, as a type of insurance. Recently, the E-CMDS system has developed a much bigger stability issue. Several staff have reported inexplicable accounting variances, where transactions have been entered correctly but show up in the database incorrectly, resulting in a false accounting balance. Alert staff were able to work with IT to fix the problems individually, but the source of the problem cannot be traced back through the E-CMDS system, making it likely that it will continue to occur. The likelihood also exists that other errors of this nature may have slipped past less experienced users.

Employee fears regarding the total demise of the E-CMDS system are not unfounded. As far back as 2005, the Public Administrator/Public Guardian Strategic Financial Plan listed E-CMDS upgrade as a priority, stating:

E-CMDS is quickly approaching the end of its effective lifecycle. As Public Administrator/Public Guardian data processing requirements change, failed

hardware is replaced, or its technical backbone is updated to meet County standards, processes within E-CMDS are not able to adapt, leaving an information system that is swiftly becoming unstable, unusable and outdated. The E-CMDS application vendor has not provided support to the System since 2003. System upgrades and/or modifications cannot be performed internally or by another vendor due to the unavailability of the software's source files.

Eleven years, three Request for Proposals (RFPs), and many thousands of wasted dollars later, the Public Administrator/Public Guardian has been unable to produce a new case management system. In February 2014, the Internal Audit Department was in the process of completing an audit of the Public Administrator/Public Guardian Offices but due to the separation of the two agencies, the audit was terminated mid-stream. The Internal Audit Department wrote and distributed a memo to the District Attorney's Office and Health Care Agency listing the issues that came to the auditor's attention during the partially completed audit. The findings include the following excerpt:

Information Technology: Public Administrator/Public Guardian uses E-CMDS as its case management and accounting application. While this system helps the Public Administrator/Public Guardian fulfill its responsibilities, it has significant limitations requiring additional workarounds, and does not contain an asset management module to provide data used for Court Accountings and physical inventory needs.

Although major issues were documented as early as 2005, the first attempt to replace the existing E-CMDS occurred in 2008. Unfortunately, despite a rigorous and expensive RFP process, the contract procured did not ultimately result in a replacement system. The Grand Jury 2008-2009 report findings and recommendations listed above point to the inefficiencies and delays in implementation despite the institution of an oversight committee. After three years of work on the project, countless hours of employee time wasted, and wasted taxpayer money, the contract was terminated and the steering committee disbanded. All completed work was discarded.

In 2012, a new RFP was initiated under the County Executive Office (CEO) Information Technology (IT) Department for fiscal year (FY) 2013-2014. After another lengthy and expensive process, the RFP was approved by the CEO but was cancelled by the Board of Supervisors due to lack of funding, despite a statement made in the 2013-2014 budget request warning "the current E-CMDS system has reached end-of-life." The Public Administrator/Public Guardian was informed that the RFP would be deferred for one year and then reinstated.

In February 2014, CEO IT staff were removed from the E-CMDS RFP process and the project was re-initiated jointly for the Public Administrator and Public Guardian Offices, this time through the Health Care Agency (HCA). Although a spokesperson for the CEO Information

Technology Office stated they provided the Health Care Agency with all the important information used in the previous CEO Information Technology RFP, the Health Care Agency chose to start from the beginning once again. No suitable vendor was found, and the RFP was cancelled in November 2015 for the third time. The Health Care Agency has indicated that other options are being explored, including initiation of a fourth RFP, but no firm plan has been submitted as of the writing of this report.

An official from the Public Administrator's Office indicated they may proceed with procuring their own separate "off the shelf," or non-customized system, which would eliminate any partnership with the Public Guardian's Office in terms of a case management system. An official with historical knowledge of this issue indicated that this was a questionable path for a couple of reasons. First, it does not make sound fiscal sense to have two separate databases with the same potential vendor involved, and second, the Public Administrator and Public Guardian Offices currently share information through E-CMDS that allows them to do business efficiently. A Health Care Agency official stated that they are actively pursuing replacement of the current E-CMDS, which may or may not include partnership with the District Attorney's Office.

The limited amount of money budgeted to the new system, approximately \$2.2 million, may be unrealistic. According to an employee familiar with the E-CMDS RFP process, any new case management database may end up costing at least \$3-5 million. Additionally, this employee stated that the current E-CMDS vendor is still in business, and that it is the most well-established in building case management databases, but their estimated cost may also be greater than less established companies. The County usually accepts the lowest bid, even though they may not be the best fit for the project. It is difficult and time-consuming for the hiring entity to prove that the lowest bidder will be unable to satisfactorily complete the job. Although less expensive, non-customized case management database systems are available, they will require heavy customization to meet the needs of Orange County Public Administrator/ Public Guardian, which will raise costs considerably. The cost of customization could make an off the shelf system less attractive than it might appear at first sight.

While Orange County appears reticent to commit the money necessary to ensure a quality vendor, the constant delays bring the antiquated 1999 E-CMDS system closer and closer to the brink. Current workarounds include:

- **Financial Outputs** (i.e., bill pay, year-end reconciliation, taxes). Currently the IT Dept. extracts data from E-CMDS and copies it into an Excel spreadsheet in order to interface with the Auditor Controller.
- **Reports.** Some report functions were built into E-CMDS in 1999, but were designed in an antiquated report generating system program. The person who built the reports is no longer employed by the County, so there was no transfer of information to the IT person

who supports E-CMDS. Statistical information is available to a limited degree, but any information inputted that does not follow strict formatting guidelines won't be included, making it highly unreliable data. Additionally, Public Administrator/Public Guardian staff depends upon the Information Technology staff to retrieve data that is available. When requested data isn't available by report, staff must review cases by hand, one by one.

- **Court Inventory and Assets Reports:** This critical function is completed manually in MS Word, leaving the door open for human error when inputting data. Additionally, the MS Word format does not comply with the Judicial Council format consistent with Rule of Court 7.575 requirements, which suggest that Inventory and Asset items must be listed and sub-totaled in "categorized" format by similar class of assets, i.e. cash, bank accounts, marketable securities, real properties, business interests, notes receivable, etc.

The most recent RFP from February 2015 listed several state-of-the-art features deemed essential for the updated case management system. (Please refer to Appendix D for Essential Features Required). For now, these critical items remain a wish list, with no solutions offered to Public Administration and Public Guardian staff in the foreseeable future.

PUBLIC GUARDIAN TRAINING AND CERTIFICATION

All Public Administrator and Public Guardian deputies are required by Probate Code (Division 4, Part 5, Chapter 3, 2923) to comply with continuing education requirements that are established by the California Association of Public Administrators/Public Guardians/Public Conservators (CAPAPGPC/Association). The CAPAPGPC, often referred to simply as "the Association," is a non-profit association representing public administrators, guardians and conservators from each of California's 58 counties. According to their website, the Association's mission is to foster communication between counties, provide education and certification to its members, and provide legislative advocacy on behalf of individuals served by these programs.

This requirement is reiterated in Public Guardian Policy 1.01 Public Guardian Certification and Continuing Education, which states, "Public Guardian Deputy staff are required to obtain and maintain certification by the Association within 18 months of employment." Some of the courses that lead to certification include Ethics, Investigations, Laws and Codes, Administration and Case Management, Identifying and Marshaling Assets, Taxes, and Elder Abuse – all critical aspects of the Public Guardian deputy responsibilities. The expectation and process for keeping membership dues current and the reimbursement process for dues is not specified in the policy despite this being a major issue for most Public Guardian deputies.

The majority of Public Guardian deputies interviewed stated that they were not currently certified due to the cumbersome process the Health Care Agency has in place for reimbursement, creating a significant litigious liability for the Health Care Agency, the County, and ultimately, the public. Prior to the Public Guardian's Office moving to the Health Care Agency their certification dues, which total \$60 annually, were paid by the Agency. This continues to be the case for the Public Administrators, whose certification dues are fully paid by the District Attorney's Office. The Health Care Agency says it is standard practice for all employees who hold a specialty license to pay the costs up front. A spokesperson for the Association stated that most counties pay for their employees' dues.

Many Public Guardian deputies have rebelled against what they claim is an unfair practice in comparison to Public Administrator benefits by refusing to pay their certification dues. To make matters worse, several Public Guardian staff told the Grand Jury that the reimbursement process is so complicated it is almost impossible to maneuver. Additionally, they stated it takes a very long time, even up to a year, to receive their reimbursement check. Others stated that completed reimbursement forms are returned to them several times, with the notation that it was completed incorrectly. Many have given up on submitting the reimbursement form altogether, either paying their own way or refusing to participate in the certification process.

The Health Care Agency is in a difficult position in terms of reimbursement. Unlike the Public Administrators, who report to an elected official who operates under a separate set of rules, the Health Care Agency is part of a large County bureaucracy. The Health Care Agency must follow strict reimbursement guidelines for all Agency sections. Yet at face value, there appears to be a clear inequity for two different sets of deputies who before 2014 had always been treated similarly. According to staff interviewed, when the Public Guardian deputies present their reimbursement concerns to management and senior officials, they go unheeded. Some Public Guardian deputies have responded by refusing to pay their dues, adversely affecting their certification status. It also means they are not adhering to Probate Code, which states, "The Public Guardian shall comply with the continuing education requirements that are established by the CAPAPGPC." By extension, they are not in compliance with established Public Guardian Policy 1.01 that requires them to be in good standing with certification. Top management has not addressed this issue with Public Guardian deputies, nor are there any penalties for non-compliance with certification, which would lead deputies to believe that their lack of certification is not a cause for concern, when it appears to the Grand Jury it should be a paramount concern.

Interviews with top Public Guardian and Health Care Agency officials revealed that several professional entities under the Health Care Agency are required to be licensed by their respective professional groups and are personally responsible for keeping that license in good standing. These other groups do not have the issues with completing the reimbursement paperwork that have been expressed by the Public Guardian staff. The Grand Jury was told the new Public Guardian has recently initiated a process for assisting deputies with reimbursement paperwork to

help expedite the process. Additionally, the Health Care Agency has recently made a commitment to Public Guardian deputies that all reimbursements will occur within 31 days of submission.

After several requests by the Grand Jury over an extended period of time, the Public Guardian's Office provided a list of certification status for Public Guardian deputies, which indicated that almost half the Public Guardian staff are not currently certified. However, this did not correlate with Public Guardian staff interviews, where some officials stated that almost no one in the Public Guardian's Office was current with their certification. The Grand Jury attempted to verify the list provided by the Public Guardian's Office with the Association records, but the Association declined to provide a list of currently certified deputies despite multiple requests.

The person assigned to oversee education and certification for the Public Guardian's Office was on extended leave for several months prior to this investigation. According to interviews, during this person's absence most assigned work tasks were not completed, including tracking certification status.

According to the Association's website, entry level guardians seeking to obtain initial certification are required to complete 40 hours of training in coursework approved by the Association within a four year period. Once certified, the guardian is required to complete 20 hours of training within a two year period, from the time of initial certification. If this timeframe is not met, the guardian must begin again with the 40 hour requirement.

Training can be implemented through three different avenues. First, outside training is any training, course, workshop or other form of professional training that is not presented by the Association, but which is given by another entity. Second, in-house training is any training, course, workshop or other form of professional training that is presented by a Public Administrator, Public Guardian or Public Conservator office for its deputies and staff. Third, regional training is any training, course, workshop or other form of professional training that is presented by the Association. A top official in the Public Guardian's Office stated that it is the deputy's responsibility to ensure their training is current. The Grand Jury has concluded that putting the onus on deputy staff has proven to be unreliable.

The \$60 dues fee is required at the beginning of each fiscal year to maintain certification. If the dues are not current, any training courses completed will not be acknowledged by the Association.

Some deputies have the opportunity to attend annual conferences hosted by the Association, where they can earn several credits toward certification. The District's Attorney's Office sponsors Public Administrator deputy staff to attend these conferences. Several Public Guardian staff stated during interviews that they either do not attend, they pay their own expenses, or they

attempt reimbursement from the Health Care Agency, although they indicated the latter option was almost too cumbersome to consider.

The Health Care Agency has made it easier for Public Guardian staff to obtain credits toward certification by scheduling frequent in-house training by County Counsel on a range of Public Guardian related subjects, which is provided free of charge and approved by the Association. Many Public Guardian staff stated they are also required to attend mandatory Health Care Agency training that doesn't count toward their certification, but because it is clinically based it is not relevant to their fiduciary duties. In fact, several staff interviewed stated the mandated Health Care Agency clinical training delays them from completing their regular job duties.

The Training Coordinator is responsible for scheduling Public Guardian staff training and ensuring the sign-in sheets and membership dues are forwarded to the Association so the deputy can receive credit toward recertification. A Public Guardian official interviewed stated part of the training and certification issue lies squarely with the Association. Because the Association is a non-profit organization they employ only two part-time office help positions. If someone disputes training credits, the Association will research the issue and make a determination on whether or not to credit the person with the training. The Association spokesperson stressed that compliance with certification through their agency ensures Public Administrators and Public Guardians provide consistency in government services as laws and statutes change, and that Best Practices and standards are well-maintained. The spokesperson also cautioned that when a County faces litigation that involves the Public Administrator or Public Guardian Office, the first question asked to the Public Administrator or Public Guardian by the defendant's attorney is, "Are you certified?"

PUBLIC GUARDIAN POLICY AND PROCEDURES

The foundation of any successful business includes a complete and comprehensive set of policies and procedures that provide employees with a clear understanding of laws, statutes, and regulations. Policies also assist in translating vision and mission statements into the practical conduction of day-to-day business by establishing consistent guidelines and work processes. The 2008-2009 Grand Jury identified several weaknesses in Public Guardian's Office policies and procedures in their report entitled *The Guardian of Last Resort*, including the development, distribution, and maintenance of the policies and procedures.

2008-09 GJ Findings/Recommendations	2008-09 PA/PG Response	2015-16 Observations
Public Guardian policies and procedures are outdated, confusing and are not being	The PA/PG wholly disagrees with this finding. Policies and procedures should be	After several attempts that never came to fruition, the PG department reviewed and

2008-09 GJ Findings/Recommendations	2008-09 PA/PG Response	2015-16 Observations
<p>adhered to as written, making it difficult to effectively implement the PA/PG stated mission.</p>	<p>reviewed constantly to ensure the business needs are being met. Currently, there is a committee in place that reviews and modifies all policies and procedures. As laws change, so must our P&Ps. A policy may be old but it does not mean it is outdated. Some policies may still apply even if they are several years old. The Grand Jury may have found them confusing because they are complex documents that required extensive training to understand. Employees also have desk references that are “companions” to the Policies and Procedures that assist them with their duties and responsibilities.</p>	<p>revised their policies in late 2015. It remains questionable whether or not policies are being adhered to as written. There is no organized committee in place to review policies, although policy revisions are reviewed by a selected staff. Employees do not have a current desk reference. Numerous staff do not have confidence that the revised policies are accurate or meaningful, nor have they received training, “extensive” or otherwise on the revised policies.</p>
<p>A policy for distributing newly written or updated policies or procedures should be developed. Appropriate training based on these documents should be given and that action documented.</p>	<p>The recommendation has been implemented. The PA/PG currently has a system in place to maintain, update and distribute new and/or revised policies and procedures through the PA/PG Internal Audit Unit that was implemented in July 2008.</p>	<p>The presentation of the new policies to staff lacks structure. Some staff questioned whether they had been published or not. The Internal Audit Unit was disbanded several years ago and there are no plans to reinstate it. There is no PG specific policy in place for reviewing and revising policies on a regular basis.</p>
<p>Old policies and procedures need to be removed from operations manuals as soon as the new ones are written and put into effect.</p>	<p>The recommendation has been implemented. Old policies and procedures are removed from operations manual as soon as new ones are written and put in place.</p>	<p>This recommendation was recently implemented in late 2015.</p>

The Grand Jury was advised by the Public Guardian's Office that all policies were reviewed and revised in late 2015 under the Health Care Agency's leadership and are available to staff via the Public Guardian's shared drive. The Grand Jury was also advised that Public Guardian staff are expected to follow general Health Care Agency/Behavioral Health Services general policies. Desktop policies, which are abbreviated versions of other policies, or staff instructions that do not rise to the level of an official policy, are planned for future reference, but are not in place at the writing of this report. The Grand Jury received a copy of the Public Guardian Policy and Procedure Table of Contents, along with copies of requested policies.

The Table of Contents is divided into organized sections, which includes the policy number, title by category (e.g., Accounting, General Estate Administration, LPS Conservatorship, Probate Conservatorship), and status (new/reviewed/revised/deleted). The status column was blank on the copy provided to the Grand Jury, so it was unclear as to which policies are new and which ones are simply reviewed and/or revised. Individual policies reviewed by the Grand Jury were well-organized and included the current status (new or revised), date of final management approval, law/regulation/statute matrix to support the content of the policy, definition of terms, and procedures that provide guidance to staff on how to implement the policy.

Although the response from the Public Guardian at the time of the 2008-2009 Grand Jury report wholly disagreed with the finding that "Guardian policies and procedures are outdated, confusing and are not being adhered to as written," several staff interviewed indicated that this was clearly the case until 2015, and with the exception of being outdated, the issues of "confusion" and "not being adhered to" linger.

Numerous Public Guardian staff had mixed reviews on the newly revised policy manual. Some staff felt confident that the manual revisions had been completed, while others were under the impression that the revisions were still a work in progress. Most indicated to the Grand Jury that they didn't care one way or the other because they intend to use whatever approach works best for them, within the confines of fiduciary and probate laws. A good example of this mentality is Policy 1.01 Public Guardian Certification and Continuing Education, which some staff have chosen to ignore almost completely, and have not been held accountable to adhere to by supervisor or managers.

When the Grand Jury requested the current policies from Public Guardian management they were not readily available in electronic format and not all had received final approval, lending credence to the concern that the revised policy process had not been completed. Most staff interviewed stated they would not refer to the existing policies to guide their daily tasks or decision making. In general, most staff found the revised policies generic and poorly written,

they did not trust them to be correct, or thought they were meant as a reference guide for new employees. Some staff even speculated that the policies were only revised to pacify Grand Jury concerns. Some staff indicated they had been offered the opportunity to provide input on the policies, or review drafts prior to final approval. Others stated that although their input was solicited to ensure the information in the policies were correct, their input went unheeded, which several staff believes renders the policies and/or procedures incorrect. Concern was also noted that law/statute/regulation citations were incorrect in individual policies, and that passages of some policies had been borrowed from the Los Angeles Public Guardian's Office and do not reflect Orange County practices.

Regardless of whether the policies are accurate or not, several staff do not have confidence in them and therefore do not find them usable. This is a concern for several reasons. First, their lack of confidence speaks to the over-arching authority and trust issue in the Public Guardian's Office. The message from management should be clear that these policies are legitimate, they reflect the expectations of the department, and they are to be adhered to uniformly throughout the organization. Instead, the message has been that the revised policies may or may not be fully completed or accurate, and that staff should feel free to use them or not, as they wish.

This leads to the second issue, which is the constant in-fighting within the Public Guardian's Office. The purpose of establishing policies and procedures is to clearly define the organizational vision and mission, then provide a roadmap of how to achieve those within existing laws/statutes/regulations. Staff arguments could be quickly settled by adhering to accurate policies and procedures. Documentation of non-adherence to established policies could also be used as substantiation of insubordination during disciplinary meetings.

An explanation of the new policies and expectations for daily use could have been easily addressed through training. When asked how staff were made aware of the new and revised policies, the Public Guardian's Office said they were advised by supervisors. However, one supervisor told the Grand Jury the policies just appeared on the shared drive and that they hadn't been officially told they were complete and ready for use. Some of the supervisors did not agree with the content of some policies and were hesitant to instruct their staff to follow the new policy changes. One supervisor stated that staff received an e-mail advising them the new policy revisions were available.

It is clear to the Grand Jury that the some Public Guardian supervisors have not completely embraced the revised policies. According to Policy 10.1 Supervisor Review of Cases, "The case administration review shall be a systematic assessment to assure the individual case administrations are up to date, organized, and meet the mandates of the applicable statutory codes." Policy 10.1 does not provide guidance as to how many cases should be reviewed for each deputy, or how often it should be completed, yet it does indicate that the results will be

utilized as part of the employee's performance evaluation and to determine possible training needs. This is the only policy that provides guidance specific to the supervisor's responsibilities to ensure deputy competency in adhering to other policies and procedures. When asked about this policy, some supervisors did not appear to know that such a policy existed. After reading it, those supervisors stated that they monitor employee's work performance in their own ways but that it is not feasible within their current workload to adhere to the monitoring process described in Policy 10.1.

A few notable policies that are not included in the Public Guardian's Office manual are:

- Vision or Mission Statement
- Code of Conduct/Progressive Supervision
- Process or Requirements for being Deputized
- Process/Expectations for Conducting Performance Appraisals
- Orientation Guidelines
- Special Incident Reporting
- Continuous Quality Improvement

The Health Care Agency provided the Grand Jury documents from their agency that included these topics, but they have not been included in the Public Guardian's Office policy manual. Several members of the Public Guardian staff told the Grand Jury that they do not consider Health Care Agency policies relevant to their department.

Perhaps the most glaring omission in the policy and procedure process is a system to ensure that policies are:

- Systematically reviewed and revised
- New laws/statutes/regulations are incorporated into the existing policies
- New policies are established as needed
- Policies are distributed in a systematic way that employees are trained on new and/or revised policies
- A filing system is established for revised and deleted policies so they can be referenced in the future due to lawsuits, audits, etc.

According to the Public Administrator/Public Guardian response to the Grand Jury's recommendation in 2008-2009 to have an organized system for policy management, this recommendation was implemented in July 2008. In fact, the recommendation was never implemented. The Health Care Agency/Behavioral Health Services Department does have an organized system for reviewing policy and procedure annually and according to an official from Behavioral Health Services, the Public Guardian's Office will fall into that process in 2016.

A Health Care Agency policy related to Policies and Procedures (I-21.02) was provided to the Grand Jury. This policy spoke to the need "To establish a uniform and consistent method for

developing and reviewing the Office of Compliance policies and procedures for the Health Care Agency.” The Grand Jury was also provided with Public Administrator/Public Guardian Policy and Procedure 1.13 to “Establish, Revise and Review of Departmental Policies and Procedures,” however, this is an outdated policy that is not included in the current Public Guardian Policy and Procedure Manual.

According to an official from the Public Administrator’s Office, Public Administrator staff are currently working from the policies established by the Public Guardian’s Office but they are in the process of editing those policies to better match-up to the Public Administrator needs and requirements. Many Deputy Public Administrator staff interviewed had similar feelings regarding the need for policies and procedures in that they don’t feel it necessary to refer to them to properly implement their day to day tasks.

PUBLIC GUARDIAN QUALITY ASSURANCE ACTIVITIES

Successful organizations rely on clear, objective data to measure the quantity and quality of work processes. They also engage in ongoing activities that analyze and reduce or eliminate risks that lead to negative outcomes or financial loss and liability. This has not been the case with the Public Guardian’s Office.

2008-09 GJ Initial Findings/ Recommendations	Public Administrator/Public Guardian Response	2015-16 GJ Observations
<p>The PA/PG should make the agency internal audit group permanent and report directly to the department head. The group should be expanded to include a person with LPS experience. Additionally, yearly internal audit schedules should be developed, covering all areas of operation and audit results should be published in written reports to senior management for required action.</p>	<p>The recommendation will not be implemented because it is not warranted or is not reasonable. The PA/PG respectfully disagrees with this recommendation. There are no plans to discontinue the Internal Audit unit. The Internal Audit Unit serves as a quality assurance/monitoring entity that reports directly to the Assistant PA/PG. The head of the Internal Audit unit has nearly 10 years of experience with the LPS Unit of the office. Audits are ongoing and results documented and provided to senior management.</p>	<p>The Internal Audit unit was disbanded after the release of the 2008-2009 report and has not been reinstated.</p>

2008-09 GJ Initial Findings/ Recommendations	Public Administrator/Public Guardian Response	2015-16 GJ Observations
The PA/PG should develop a method of tracking to measure improvements of service and reduction of costs.	The recommendation has been implemented. The process is taking place as part of the budget and business planning process. Administration, Program and the Finance Units all collaborate on measuring results and implementing efficiencies.	The PG Office has no evidence that tracking of any quality measures are in place.

2011-12 GJ Findings/ Recommendations	CEO Response	2015-16 GJ Observations
By October 1, 2012, the Board of Supervisors should direct the Office of the Performance Audit Director to evaluate Adult Protective Services, the Office on Aging, Adult Mental Health Services, and the Public Guardian. The evaluation would determine their individual effectiveness; assess their coordination and communication; and discover any overlap in services among them.	Update from CEO in November 2015: The Office of the Performance Audit Director has not been directed to conduct an evaluation of the Office on Aging, Adult Mental Health Services, and the Public Guardian, either as an ad hoc audit/advisory assignment or as part of its annual work plan. A review of the Public Administrator/ Public Guardian was recommended by the CEO's Office in 2011 but was not included due to other competing priorities and budget constraints.	The Office of the Performance Audit Director completed a partial audit in February 2014, but it was not completed due to the separation of the PA and PG Offices. A new audit from the Office of the Performance Audit Director was initiated in January 2016.

Behavioral Health Services is responsible for the day-to-day management of Public Guardian's Office. They have an established Quality Assurance Department that is primarily responsible for health care compliance. According to an official in the Behavioral Health Services Quality Assurance (QA) Department, Public Guardian services are not treatment oriented (excluding

LPS services), so they don't fit into the current Behavioral Health Services quality assurance environment. The Behavioral Health Services Quality Assurance Department provides staff training, documentation auditing, acts as liaison for State contracts, reviews departmental policy and procedure, etc. Additionally, they conduct two quality assurance projects annually. Behavioral Health Services has established standard metrics and collects data on an ongoing basis, including the monitoring of grievances and complaints, but nothing specific to the Public Guardian's Office. They report information gathered to a Quality Improvement Committee (QIC) that meets every other month. The Public Guardian's Office has not yet been integrated into the Behavioral Health Services Quality Assurance activities and there is no plan or timeframe for inclusion. After two years under the leadership of the Health Care Agency/ Behavioral Health Services the sole interaction with Behavioral Health Services Quality Assurance Department has been a review of the Public Guardian's Office revised policies and procedures to ensure they meet the Health Care Agency formatting guidelines. According to a Behavioral Health Services spokesperson, the Quality Assurance Department provided no input on the Public Guardian's Office policy content as they are not familiar with Probate Codes, which have strict fiduciary guidelines.

The Public Administrator/Public Guardian briefly had its own internal audit section but it was disbanded several years ago under previous leadership. When the internal audit section was functioning, its primary role was to audit and evaluate Inventory and Appraisal (I&A) Reports, but they had other assignments as well. According to one official, the expectation is that Public Guardian supervisors will manage deputies through structured audits of their work products and discuss the results at performance appraisal review; however, the Grand Jury learned from some supervisors that they are not completing this task consistently. Additionally, several interviews confirmed that when issues with a deputy's performance are identified, little or no action is taken. An audit of a specific deputy's work may improve that person's performance, but it doesn't produce any quantitative or qualitative data or analysis to identify trends in the department.

The Information Technology Department has the ability to run a limited number of reports in E-CMDS, but it did not appear to the Grand Jury that reports are utilized for any quality assurance or risk management purposes. There is no designated person within the Public Guardian's Office or Behavioral Health Services to track data or identify trends. Additionally, the data stored in E-CMDS cannot be reliably collected and analyzed by the existing outdated report generating system, thus making statistical trending and analysis difficult.

The Public Guardian is responsible for determining if deputies are meeting their case management responsibilities. The best way to do this would be to have a system in place for collecting and analyzing data that reflects compliance with Probate Codes, court documents, and site visits. Additionally, given the layers of management over the Public Guardian, which

includes the Health Care Agency and Behavioral Health Services, coupled with the recent hiring of a new Public Guardian, standard measures would provide a comprehensive, fact-based process for identifying the strengths, weaknesses, and most pressing issues in the Public Guardian Department. There is good reason to suspect that some Public Guardian deputies may not be meeting industry standard best practices since many of them are not current with their certification. The stark omission of quality assurance and risk management activities put the Public Guardian's Office, Health Care Agency, and County at risk for lawsuits and unwanted negative publicity.

Audits initiated outside of the Health Care Agency, Behavioral Health Services, or the Public Guardian's Office are currently the only formal process for determining compliance with Probate Codes and for identifying internal issues. The County's Internal Audit Department began an audit of the Public Administrator/Public Guardian Offices in February, 2014, but the initiation of this audit coincided with the realignment of the Public Administrator and Public Guardian Offices, so the audit was never completed. A memo with partial findings detailing some of the issues that came to their attention during the uncompleted audit was sent to the Chief Deputy Public Administrator, the Public Guardian, the District Attorney and the Health Care Agency Director. There were a total of ten unofficial findings, including concerns such as limitations with the E-CMDS system, a significant backlog (176) of court accounting documents, outdated policies and procedures, lack of inventory of personal property stored in the warehouse, and a backlog of 650 outstanding payment requests totaling approximately \$490,000. Each of these preliminary findings should have had processes in place to prevent their occurrence. At the writing of this report there remain no formal processes, monitors, or reporting structure in place by the Public Guardian's Office to prevent reoccurrence of these significant issues. The Grand Jury learned during the course of their investigation that the Internal Audit Department initiated another audit of the Public Administrator and Public Guardian Offices in January 2016. The results of that audit were not available prior to the filing of this report.

FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2015-2016 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 “Changing of the Guardian: Life After Reorganization of the Public Administrator and Public Guardian Offices,” the 2015-2016 Orange County Grand Jury has arrived at 25 (twenty-five) principal findings, as follows:

Leadership:

- F1.** The Public Guardian’s Office does not work with Human Resources to fill vacancies for permanent and temporary positions in a timely manner. This results in some tasks not being completed, as well as placing an additional workload on existing staff to ensure all conserved individuals receive mandated services.
- F2.** Behavioral Health Services/Public Guardian leadership does not have a process in place to ensure managers and supervisors adhere to the Performance Incentive Plan (PIP) Manual standards for conducting quality performance appraisals.
- F3.** The Public Guardian Policy 1.12, Performance Evaluation, provided to the Grand Jury, is not included in the current Public Guardian policy manual and therefore, the Public Guardian managers and supervisors lack clear direction on the elements of an effective performance evaluation.
- F4.** The Public Guardian’s Office does not utilize the County of Orange Disciplinary Process Manual, which includes specific progressive steps of discipline to ensure mid-level managers and supervisors hold staff accountable. This has resulted in incidents of unprofessional staff conduct and inconsistent compliance with established protocols.
- F5.** The Public Guardian’s Office has not ensured that all supervisors consistently follow established Policy 10.1 Supervisor Review of Cases to conduct quality reviews of deputy casework.
- F6.** Health Care Agency/Behavioral Health Services has failed to fully organizationally integrate the Public Guardian function, resulting in a fragmented and isolated Public Guardian Office.
- F7.** Some Health Care Agency/Behavioral Health Service/Public Guardian leadership staff do not effectively communicate with Public Guardian staff, resulting in mistrust, in-fighting, and low morale.

- F8.** The Public Guardian Lanterman-Petris-Short (LPS) supervisory unit operates as two independent groups serving the same purpose, resulting in ongoing office conflicts and interpersonal issues.

Public Administrator Hiring Practices

- F9.** The Office of the District Attorney/Public Administrator did not ensure that one candidate who was hired met minimum qualifications when filling Extra Help positions by not conducting an investigation of past employment or experience.
- F10.** The District Attorney Human Resources Department does not have a process in place to verify that a candidate meets all minimum qualifications (MQs), nor do they verify employment history that qualifies candidates for a position in the District Attorney's office.
- F11.** The Office of the District Attorney/Public Administrator violated County Merit Selection Rules (MSR) when an employee was reassigned from one temporary position to another within the Public Administrator's Office.
- F12.** The Office of the District Attorney demonstrated questionable leadership when a newly hired temporary employee was promoted into a leadership position, resulting in the new hire managing the staff members who were still providing orientation training for the new hire.
- F13.** The Public Administrator's Office has no established mentorship training or leadership program in place for developing talented current employees. This has resulted in experienced Public Administrator employees being passed over for promotional and leadership opportunities.

Case Management System (E-CMDS)

- F14.** The E-CMDS case management system is antiquated, unreliable, does not have the ability to quickly and accurately cull reliable data, and does not meet the current business needs of the Public Administrator/Public Guardian deputies. Although there have been several attempts to replace the current E-CMDS, each has failed to produce tangible results.
- F15.** The Public Administrator's Office is considering pursuing the purchase of a case management system that will be completely separate from whatever case management system the Public Guardian pursues, which has the potential to result in fragmented communication and duplicative processes when cases are handed over from the Public Guardian to the Public Administrator.

Training and Certification:

- F16.** The Public Guardian’s Office does not have a reliable system for tracking Public Guardian deputy training and membership status to ensure guardians maintain certification as stated in Probate Code.
- F17.** The Public Guardian’s Office does not hold deputy staff accountable for adhering to Policy 1.01- Public Guardian Certification and Continuing Education. This has resulted in the majority of deputies being out of compliance with certification which could have negative consequences and/or impact their ability to best serve their clients.
- F18.** The Public Guardian’s Office has not provided clear guidance or assistance to ensure deputies understand the financial reimbursement process, resulting in deputies not pursuing recertification.

Policy & Procedure

- F19.** The Public Guardian’s Office has worked diligently to update policies and procedures, however, some of the staff responsible for implementing these policies do not agree with some of the content, are not aware that they have been completed, and/or do not intend to comply with the policies.
- F20.** The Public Guardian’s Office has not effectively communicated the expectation that deputy staff are required to adhere to updated Public Guardian policies.
- F21.** Behavioral Health Services has a policy review structure in place. Although it is the intention to integrate the Public Guardian Office into Behavioral Health Services processes, two years have gone by without this integration occurring. Behavioral Health Services is not knowledgeable about Public Guardian processes and can only review Public Guardian specific policies for style and format compliance.
- F22.** Public Guardian policies are not reviewed and revised on a regular basis and there is no clear system in place for distribution of new or revised policies.
- F23.** The Public Guardian staff is expected to follow general Behavioral Health Services policies, which address over-arching expectations for all Behavioral Health Services staff. However, some Public Guardian staff do not feel like they are an integral part of the Behavioral Health Services culture and do not acknowledge that Behavioral Health Services policies are relevant to their job. The Public Guardian manual, which is the primary reference for deputies, does not include several policies that would be considered as staples for most organizations.

Quality Assurance:

- F24.** The Public Guardian’s Office has no internal Quality Assurance unit, and the department is not represented or included in Behavioral Health Services quality assurance activities

two years after the reorganization of the Public Guardian Office. The Public Guardian's Office depends upon external audits to evaluate their performance.

- F25.** The Public Guardian's Office does not initiate any internal quality assurance activities to measure job performance, or adherence to Probate Codes and Best Practices to ensure excellent customer service.

RECOMMENDATIONS

In accordance with California Penal Code Sections 933 and 933.05, the 2015-2016 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.

As a follow-up to the Grand Jury "Changing of the Guardian: Life after Reorganization of the Public Administrator and Public Guardian Offices," the 2015-2016 Orange County Grand Jury makes the following 24 (twenty-four) recommendations:

- R1.** The Public Guardian's Office should coordinate monthly meetings with Human Resources to discuss and take action on personnel needs, including anticipated short-term and actual vacancies, as well as opportunities for promotion to be initiated by December 31, 2016. (F.1)
- R2.** The Public Guardian's Office should provide training to all managers and supervisors related to the expectations for and mechanics of writing Performance Appraisals. Upon completion of this training the Public Guardian should incorporate implementation and adherence into a Quality Assurance process to ensure compliance with expected standards all to be initiated by December 31, 2016. (F.2)
- R3.** The Public Guardian's Office should re-evaluate Policy & Procedure 1.12 Performance Evaluations for potential inclusion into the current Public Guardian Policy Manual by December 31, 2016. (F.3)
- R4.** The Public Guardian's Office should develop curricula and initiate training for all levels of Public Guardian staff regarding the Health Care Association's mission and vision statement and the Health Care Association's Code of Conduct, with emphasis on how these topics relate to the role of the Public Guardian and the need to follow established protocol, by December 31, 2016. (F.4)
- R5.** The Public Guardian's Office should develop and initiate training for all managers and supervisors related to the County of Orange Disciplinary Manual by December 31, 2016. (F.4)

- R6.** Senior Executive Public Guardian personnel should meet with managers and supervisors individually monthly to discuss and take action on disciplinary issues within the department with these meetings to be initiated by December 31, 2016. (F.4)
- R7.** The Public Guardian’s Office should implement a consistent process for objectively evaluating Public Guardian casework that includes a standardized audit form to objectively measure Public Guardian deputy performance with implementation to be initiated by December 31, 2016. (F.5)
- R8.** The Health Care Agency/Behavioral Health Services should have a management representative attend monthly Public Guardian staff meetings to directly communicate the Health Care Agency’s vision and mission, as well as to address any Public Guardian concerns with such meetings to be initiated by December 31, 2016. (F.6, F.7)
- R9.** The Public Guardian’s Office should ensure minutes from Public Guardian staff meetings are made available to all Public Guardian staff on the internal Public Guardian portal by December 31, 2016. (F.6, F.7)
- R10.** The Public Guardian’s Office should establish quarterly team meetings with Public Guardian staff, which should incorporate a positive recognition program, state of the business, and team building events with such meetings to be started by December 31, 2016. (F.6, F.7)
- R11.** The Public Guardian’s Office should have one supervisor directing a consolidated Lanterman-Petris-Short (LPS) team by December 31, 2016. (F.8)
- R12.** The District Attorney’s Office should coordinate with County Centralized Human Resources to develop and initiate training to ensure the District Attorney Human Resources Department complies with the Merit Selection Rules (MSR) for both temporary and permanent positions by December 31, 2016. (F.9, F.11)
- R13.** The District Attorney’s Office should instruct the District Attorney Human Resources Department to develop and implement a formal process for validating that candidates meet all minimum qualifications for any Public Administrator position advertised, as well as validating work experience relevant to any Public Administrator position advertised, regardless of whether the position is temporary or permanent with such process to be in place by December 31, 2016. (F.10)
- R14.** The District Attorney’s Office should develop a plan to implement a mentorship/leadership program for Public Administrator deputies by December 31, 2016. (F.13)
- R15.** The Public Administrator and Public Guardian Offices, in conjunction with the IT Project Manager, should meet with the County Executive Office (CEO) by December 31, 2016 to recommend to the Board of Supervisors the purchase of a new case management system

that will meet the business needs and interface with both the Public Administrator and Public Guardian deputy staff. (F.14)

- R16.** The Public Administrator and Public Guardian Offices should re-establish a steering committee, with a designated Project Manager, by December 31, 2016 to acquire a replacement case management system. (F.14, F.15)
- R17.** The Public Administrator and Public Guardian Offices should work together with the IT Project Manager to ensure the new case management system meets the Public Administrator and Public Guardian business needs through a comprehensive report function that can accurately track data and produce meaningful reports by June 30, 2017. (F.14)
- R18.** The Public Guardian Office should initiate a process to ensure Public Guardian training records coincide with the California Association of Public Administrators Public Guardians Public Conservators Association (CAPAPGPC) records, that deputies are current with their training and certification, and that consequences for not being in compliance are clearly communicated and addressed by December 31, 2016. (F.16, F.17)
- R19.** The Public Guardian Office should develop clear guidelines, with examples, for Public Guardian deputies to utilize when requesting reimbursement for training and membership dues. The Public Guardian Office should provide training on the guidelines and provide a designated manager to assist in the process by December 31, 2016. (F.18)
- R20.** The Public Guardian Office should develop a process to reimburse Public Guardian staff within 30 working days of submission for reimbursement of out-of-pocket costs for training and membership dues by December 31, 2016. (F.18)
- R21.** The Public Guardian Office should provide immediate training on all new and revised Public Guardian policies as well as Behavioral Health Services policies that pertain to Public Guardian staff. Training should include management expectations on adherence to policies, along with a question and answer period for deputies to express any concerns about the accuracy of policies or their ability to carry out the policies. The training should be implemented by December 31, 2016. (F.19, F.20)
- R22.** The Public Guardian Office should ensure Public Guardian policies are reviewed and revised on a regular basis, including solicitation of knowledgeable staff input to ensure accuracy. The assigned manager/supervisor should ensure communication of new or revised policies, as well as initiate documented Public Guardian staff training on new and revised policies to ensure understanding and compliance by December 31, 2016. (F.21, F.22)
- R23.** The Public Guardian Office should ensure that Behavioral Health Services policies that pertain to Public Guardian deputies are easily accessible to them by December 31, 2016. (F.23)

- R24.** The Public Guardian Office should integrate a Public Guardian manager or supervisor into the Behavioral Health Services quality assurance structure, with a defined role of initiating quality assurance and risk management activities, including regularly conducted internal audits specific to the Public Guardian role by December 31, 2016. (F.24, F.25)

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 County official shall 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), (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 or requested from:

Responses Required:

Responses are required from the following governing bodies within 90 days of the date of the publication of this report:

90 Day Required Responses:	F 1	F 2	F 3	F 4	F 5	F 6	F 7	F 8	F 9	F 10	F 11	F 12	F 13	F 14	F 15	F 16	F 17	F 18	F 19	F 20	F 21	F 22	F 23	F 24	F 25	
OC Board of Supervisors	X	X	X	X	X	X	X	X					X	X	X	X	X	X	X	X	X	X	X	X	X	X

90 Day Required Responses:	R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10	R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20	R 21	R 22	R 23	R 24	R 25	
OC Board of Supervisors	X	X	X	X	X	X	X	X	X	X	X				X	X	X	X	X	X	X	X	X	X	X	X

Changing of the Guardian: Life After the Reorganization of the PA and PG Offices

Responses are required for the following elected agency or department head within 60 days of the date of the publication of this report.

60 Day Required Responses:	F 1	F 2	F 3	F 4	F 5	F 6	F 7	F 8	F 9	F 10	F 11	F 12	F 13	F 14	F 15	F 16	F 17	F 18	F 19	F 20	F 21	F 22	F 23	F 24	F 25	
OC District Attorney									X	X	X	X	X	X												

60 Day Required Responses:	R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10	R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20	R 21	R 22	R 23	R 24	R 25
OC District Attorney												X	X	X	X	X	X								

Responses are requested from the following non-elected agency or department heads:

Requested Responses:	F 1	F 2	F 3	F 4	F 5	F 6	F 7	F 8	F 9	F 10	F 11	F 12	F 13	F 14	F 15	F 16	F 17	F 18	F 19	F 20	F 21	F 22	F 23	F 24	F 25
Public Guardian	X	X	X	X	X	X	X	X						X	X	X	X	X	X	X	X	X	X	X	X
Orange County CEO													X												

Requested Responses:	R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10	R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20	R 21	R 22	R 23	R 24	R 25
Public Guardian	X	X	X	X	X	X	X	X	X	X	X				X	X	X	X	X	X	X	X	X	X	X
Orange County CEO														X											

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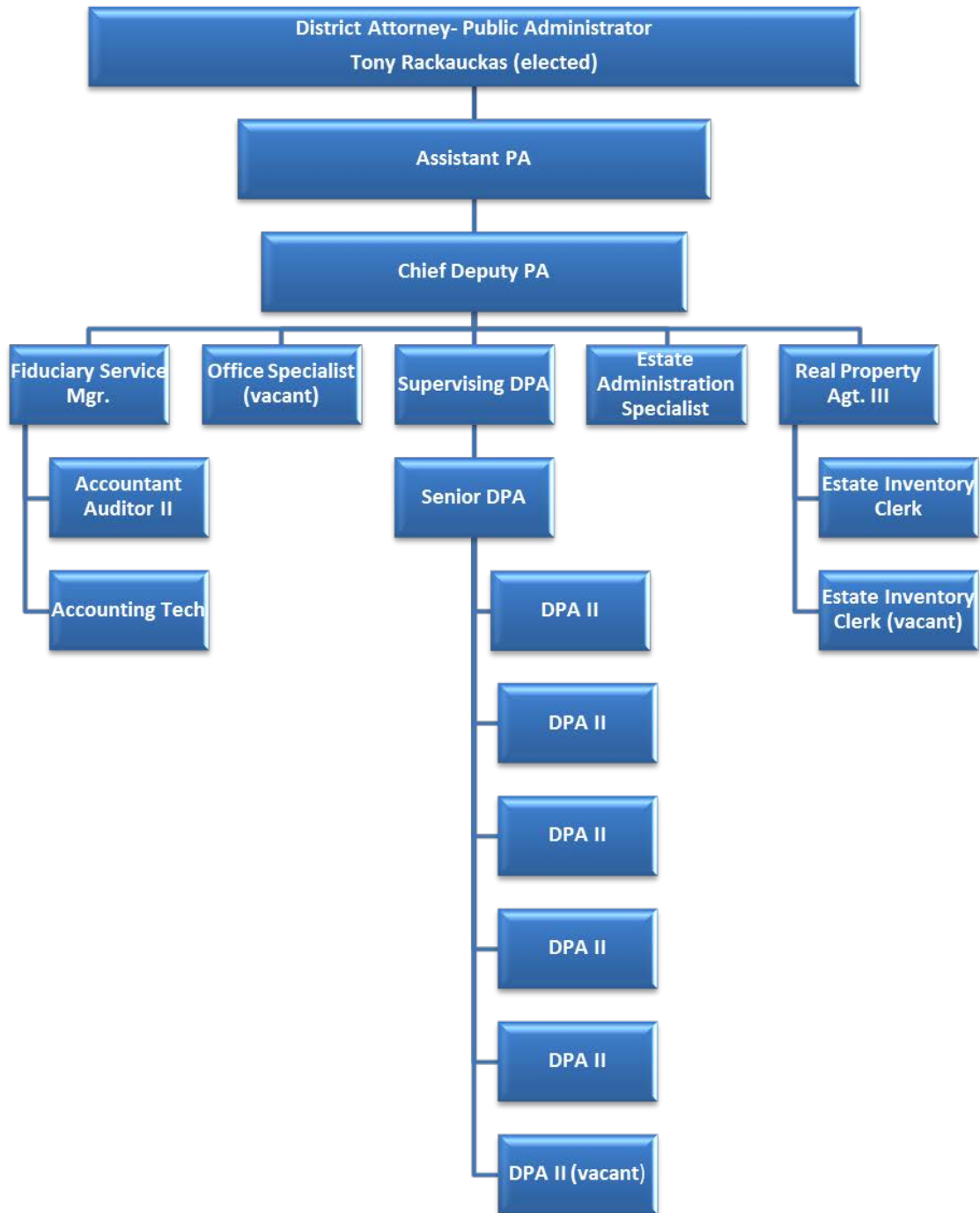
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APPENDIX A: Office of the District Attorney – Public Administrator

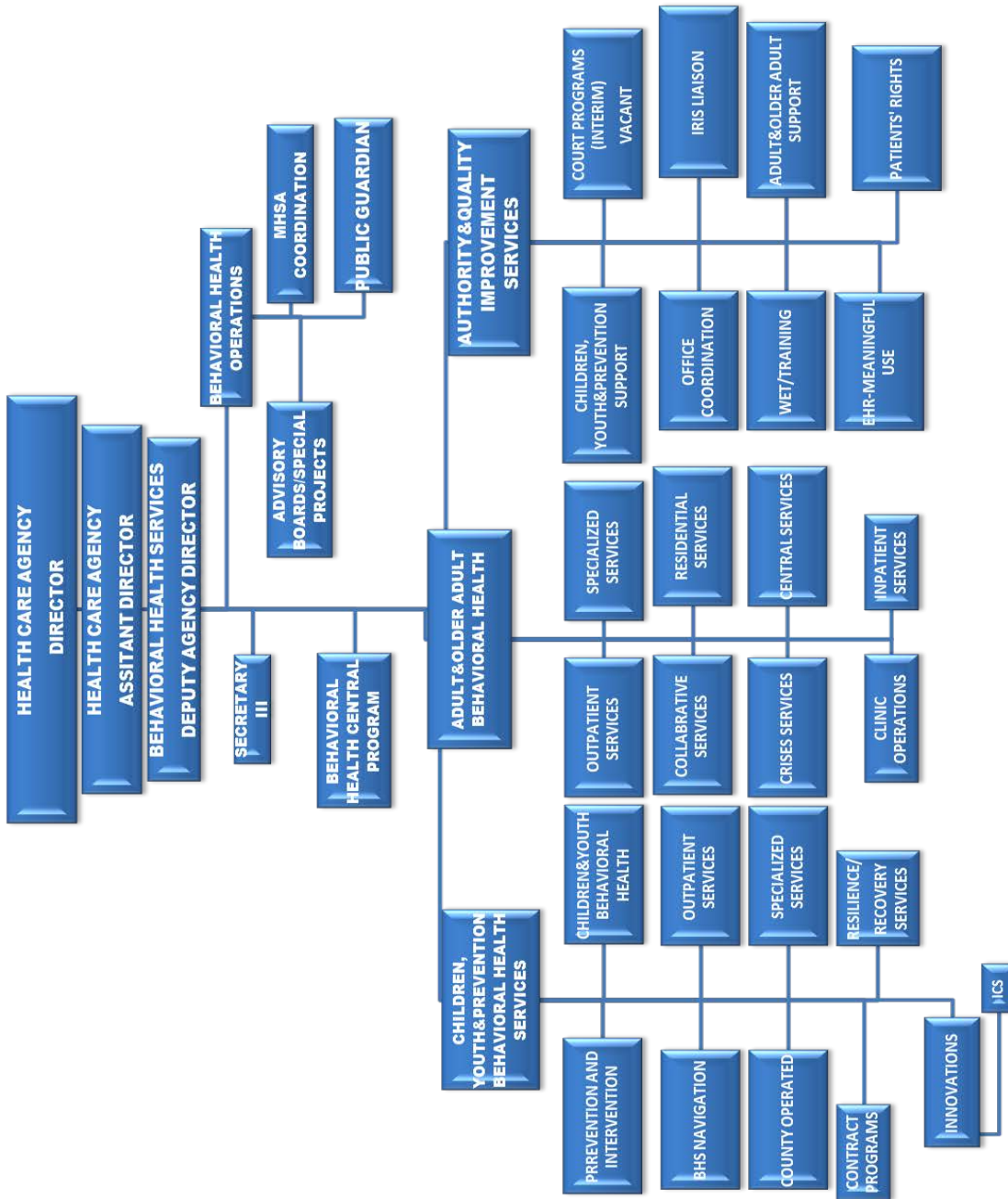
Organization Chart – November 2015



APPENDIX B: Health Care Agency

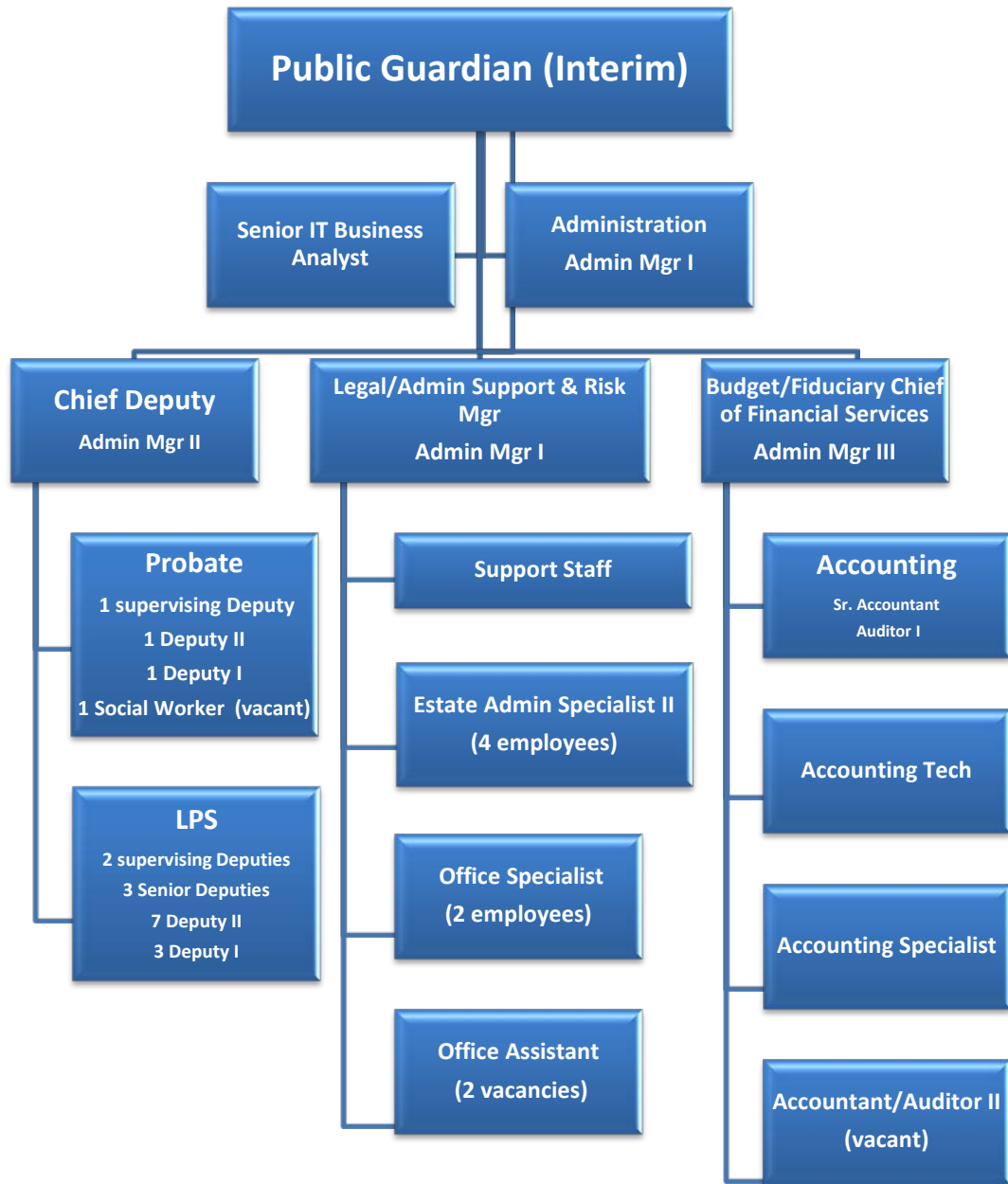
Organization Chart – September 2015

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APPENDIX C: Behavioral Health Services Public Guardian

Organization Chart – September 2015



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APPENDIX D: Essential Features Required for a New Case Management System

- Management of all case activities from the rejection, referral, investigation, and administration, through closure across all different case types.
- The system’s “Program/Case Management Module” shall have a platform to manage targeted case management (TCM) activities including the ability to capture and electronically upload TCM encounter statistics and other related information to the State of California.
- The system’s financial module shall demonstrate conformity and adherence with all accounting principles applicable to a fiduciary type operation, segregation of duties, internal control standards, security practices, and tiered approvals consistent with industry and fiduciary fiscal guidelines and as prescribed by OCPG/OCPA’s business rules.
- The financial module shall incorporate accounting rules and functionalities to facilitate the Segregation of Corpus/Principal versus Income activities consistent with the Uniform Principal and Income Act (UPIA) requirements.
- The financial module shall accommodate the new Rule of Court 7.575 court accounting schedule, and form requirements pertaining to a conservatorship estate.
- The system’s asset module shall demonstrate compliance with industry standards/practices for asset management including but not limited to the recording, tracking, storage, sale of assets, and the corresponding impact to accounting transactions and reporting.
- The system shall have the capability to compile, prepare, and generate court inventory and appraisal reports (I&A), in Judicial Council format consistent with Rule of Court 7.575 requirements.
- The system’s asset module shall be capable of managing typical auction processes including but not limited to the bidding process, awarding of winning bid, invoicing for items sold, payment and receipting process, release of assets, facilitation of sales tax collection, as well as the corresponding accounting sales transactions and treatment.
- The system’s reporting module shall have the ability to accurately and quickly pull results and agile management of case and statistics.
- The system shall be comprehensive in which case data spanning from entry of case to accounting through assets back through case or accounting as applicability of data meets
- Public Administrator/Public Guardian business needs.
- The system shall meet all federal, state and local regulatory compliance requirements for the applicable use of information and data.
- The system shall have barcoding and asset traceability from entry to disposal, complying with standard chain of custody, images, inventory, release auditability and reporting.

- The system shall possess a user-friendly interface that allows for easy data entry, maintenance, and management of cases.
- The system shall be agile and scalable to meet evolving industry requirements in the area of OCPG/OCPA legislative changes and mandates.
- Interface capability to meet the evolution of state, local judicial and agency requirements, and their interactive data exchanges and statistical and 5270 Welfare & Institutions Code requirements.

APPENDIX E: List of Acronyms

BHS	Behavioral Health Services
CAPAPGPC	California Association of Public Administrators, Public Guardians and Public Conservators
CEO	County Executive Office
DA	District Attorney
E-CMDS	Electronic Case Management Database System
HCA	Health Care Agency
HR	Human Resources
I&A	Inventory and Appraisal
IT	Information Technology
LPS	Lanterman-Petris Short
MQ	Minimum Qualifications
MSR	Merit Selection Rules
PA	Public Administrator
PG	Public Guardian
PIP	Performance Incentive Plan
QA	Quality Assurance
QIC	Quality Improvement Committee
RFP	Request for Proposal
UPIA	Uniform Principal and Income Act

DRONES: KNOW BEFORE YOU FLY



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EXECUTIVE SUMMARY

Recent exponential growth in the purchase of low cost unmanned aircraft, popularly called drones, has created new issues for all consumers and government entities regarding safety and privacy. What was once a relatively small, build-it-yourself hobby segment has evolved into a much larger population of consumers interested in using drones as platforms for low cost still and video photography. In the past, the hobby community organized itself into self-policing groups which functioned according to acceptable community standards. Now consumers purchasing drones are much more likely to operate them outside any organized activity, and this raises questions and concerns about safety and privacy.

The Federal Aviation Administration (FAA) is responsible for all airspace in the United States, and issues operational guidelines for aircraft. It has chosen to require registration of a drone weighing more than 0.55 lbs. (8.8oz.), but less than 55 lbs., and used solely for outdoor hobby or recreation. The FAA has not addressed the use of drones operated at altitudes below 400 ft. with the exception of requiring operator registration. Registration creates a unique FAA identification number which must be marked on the registered aircraft. The new FAA registration requirement provides local law enforcement with the means for tracing ownership of drones and gives teeth to any local ordinances that may be enacted in the future.

Concurrent with the publication of this report, legislation is going through Congress that could affect local efforts to regulate the design, ownership, and operation of drones. This could affect the recommendations of this report. As with all pending legislation, however, it could change significantly prior to passage, or even fail to pass.

Governor Brown recently vetoed several drone bills that had bipartisan support citing existing laws that already prohibit interference with first responder duties. Meanwhile, local communities in California have experienced several serious incidents involving interference with fire-fighting and law enforcement aircraft, as well as complaints regarding invasion of privacy. Since neither the Federal nor California State governments have yet interceded, regulation falls to local communities to enact ordinances tailored to local use of these drones.

In December 2015, the City of Los Angeles passed an ordinance, based upon FAA operational guidelines, which could serve as a model for the County of Orange and its cities. As a result of this investigation and in the interest of public safety, the Grand Jury recommends that cities and the county develop local ordinances and promote drone education.

BACKGROUND

Scope of this Report

The Grand Jury investigated the vulnerability of the Orange County Fire, Police, and Sheriff/Coroner Departments to the anticipated increase in ownership of privately-owned hobby drones, but restricted examination of the topic of drones to the expanding recreational/hobbyist market and its consequences for Orange County's emergency responders. Therefore this investigation does not include drones used for commercial purposes such as surveying, entertainment industry activities and news gathering, or publicly owned drones, such as those used by law enforcement and public safety entities.

The Market

Until recently, the remotely piloted aircraft community was a relatively small hobbyist group primarily interested in building and piloting model aircraft. In the past, building a remote-controlled aircraft entailed a large commitment of time and energy. Flying club enthusiasts enforced piloting norms and behavior. However, as low-cost drones have become available, the self-regulating influence of the hobbyist/modeling community has waned. In addition to inexpensive drones, economical high resolution still and video cameras are available everywhere. The public's coupling the two has led to a new and very large market – the hobbyist/recreational user.

Reasons for the Current Focus on Drones

The publication *Money Watch* estimated that more than one million small drones were sold in 2015. Speaking at an industry conference, Rich Swayze, FAA Assistant Administrator for Policy, International Affairs and Environment, predicted "a million drones under people's Christmas trees." A senior industry analyst at Frost & Sullivan said the FAA's guess was fairly accurate. Mr. Swayze estimated hobby drone sales of 714,000 and about 214,000 commercial drone sales for 2015, for a total of slightly less than 1 million (Berr 1).

While most new owners will operate responsibly, rogue or careless users may become a problem. In 2015, San Bernardino County had two incidents where a drone caused a fire-helicopter to stop dropping water in order to avoid a collision (North Fire 1-2). A Los Angeles County police-helicopter also had a similar experience (Serna 1-2).

Safety is a prime concern for other airborne vehicles, such as incoming and outgoing aircraft at the Orange County airports, as well as fixed wing and rotary aircraft operated by the Orange County Fire Authority, the Sheriff/Coroner's Department, and all first responders. Encounters

with small drones that enter restricted airspace have the potential for causing lethal damage, and county officials have expressed concern for the safety of the general public who may be hit by drones flying at very low altitudes. The new market and the way consumer drones can be flown raise an important question for Orange County municipalities: Are these consumer drones safe for operation in a local setting?

The Grand Jury also recognizes, and briefly considered, the issue of privacy. Drones flying over private property may lead to conflicts with property owners. Drones flying over public property, such as beaches and parks, may also lead to conflicts over the public enjoyment of such venues. Several cities reported concerns with privacy during this Grand Jury investigation. While these concerns do not rise to the level of statistical evidence, they do raise awareness of the nature of this new problem. Certainly, local municipalities may wish to create ordinances to address specific issues involving these small drones. (Law1). Privacy is a valid concern but the scope of this investigation is focused on the safety issues for our first responders.

METHODOLOGY

The Grand Jury conducted research two ways:

1. Online and through print publications such as newspapers, professional journals, FAA Press Releases and numerous web sites. In conducting online and print research, the Grand Jury studied information about the consumer drone market, and current and pending municipal, state and federal legislation. It also looked at safety issues and researched incidents involving small drones.
2. Collection of original data from Orange County sources:

From September 21 to November 4, 2015, the Grand Jury conducted a survey among Orange County stakeholders. This included all thirty-four cities and four additional entities: John Wayne Airport, Fullerton Municipal Airport, the Orange County Fire Authority and the Sheriff/Coroner Department. This survey and subsequent interviews asked about experiences with drones, plans for any local legislation relating to small drones and whether or not the entities had or contemplated plans to educate the public in the use of small drones.

INVESTIGATION AND ANALYSIS

The FAA is responsible for all airspace, but, with the exception of requiring operator registration, has not addressed the use of drones operated at altitudes below 400 ft.

A drone is any aircraft without an on-board pilot. Within this definition there is an incredible range in shapes, sizes, and capabilities that characterize today's unmanned aircraft. Personal

drones are currently a hobbyist's item most often used for simple entertainment or for aerial photography.

A drone system generally consists of three elements: the platform, command and control, and the payload.

- **Platform.** The term refers to the actual aircraft. In general it may be fixed-wing or rotary. Currently, consumers prefer various forms of rotary or helicopter platforms because of their hovering ability. The platform is sometimes given the acronym UAV for Unmanned Aerial Vehicle.
- **Command and Control.** The term refers to the operator on the ground and the equipment used to send signals to the platform, telling it what maneuvers to make, how to navigate and how to operate the onboard sensors.
- **Payload.** The term refers to any package mounted on the platform such as a still or video camera or other sensor.

While all three elements are technically necessary for a complete system, the portion consisting of the platform plus payload, namely, that part which is airborne, is generally called the drone. There is, however, some confusion in terminology, as these systems have various acronyms which are often used interchangeably. Terms, such as unmanned aerial systems (UAS) or small unmanned aerial systems (sUAS) are good examples of interchangeable terms. The acronym UAV (Unmanned Aerial Vehicle) is used for both the platform and payload or the entire system. For clarity, the consumer must consider the context. For example, FAA regulations regarding weight, which are concerned only with the airborne portion, may use only the acronym UAS.

Who has Jurisdiction over Hobbyist-Drones?

Federal Aviation Administration (FAA)

The Federal Aviation Act of 1958 established the FAA and made it responsible for the control and use of navigable airspace within the United States. The FAA created the National Airspace System (NAS) to protect persons and property on the ground, and to establish a safe and efficient air space environment for civil, commercial, and military aviation.

In 2012 Congress passed the FAA Modernization and Reform Act (FMRA), which carved out a special exemption for model aircraft. The FAA issued guidelines for model aircraft operations which include the following requirements (Model, 1):

- Fly below 400 Feet and remain clear of surrounding obstacle
- Keep the aircraft within visual line of sight (VLOS) at all times
- Remain clear of and do not interfere with manned aircraft operations

- Do not fly within 5 miles of an airport unless you contact the airport and control tower before flying
- Do not fly near people or stadiums
- Do not fly an aircraft that weighs more than 55 lbs.
- Do not be careless or reckless with your unmanned aircraft; you could be fined for endangering people or other aircraft.

Hobby/recreational drones weighing less than 55 lbs. are currently exempt from the FAA Certification of Authorization (COA) but must operate in accordance with community-based safety guidelines such as those required by the Academy of Model Aeronautics (AMA), a national organization recognized by the FAA. The AMA Safety Code allows the public to fly radio-controlled models in First-Person View (FPV) mode and requires a “spotter” to avoid a collision. The AMA prohibits public use of vision/video glasses or goggles while operating a drone. AMA members can take advantage of training programs and mentorships, and these are guided by best practices. The AMA has also recommended guidelines for selecting flying-sites that have worked well for decades (Appendix G.)

Section 336 of the 2012 FMRA prohibits the FAA Administrator from promulgating rules or regulations regarding model aircraft flown strictly for hobby or recreational purposes. There are some however who believe other governmental agencies, including local jurisdictions, may issue rules within this domain. Others believe that only the FAA may hold sway there. Both sides do agree that other entities may impose rules related to takeoff and landing of drones.

In November 2015, the FAA began to require registration of the small systems classified as UAS whose platform plus payload weighs between 0.55 lbs. (8.8 oz.) and 55 lbs. These specifications are not related to altitude of operation, but are based solely on weight. Since these small drones may be used for commercial purposes or recreation, there are different registration criteria for each. This registration requirement is a powerful tool for identifying owners of drones who may, intentionally or not, fly in restricted locations or who create a danger or nuisance to the public (UAS 1-10). It provides a means for enforcing rules and imposing penalties. Registration data is available to the public at <http://registry.faa.gov/aircraftinquiry/>. As of December 21, 2015 registration is required (FAA Small 1-2). Requirements are listed below:

- UAS that weighs 8.8 ounces to 55 pounds needs registration before operating;
- Registration numbers must be affixed to aircraft and the number covers any/all UAS the registrant owns;
- Operators must be at least 13 years old; and
- A fee of \$5.00 must accompany online registration.

Nearly 300,000 owners registered their small, unmanned aircraft in the first 30 days of the FAA online registration requirement (Rosenberg 1).

Concurrent with the publication of this report, the United States Congress is considering the Federal Aviation Administration Reauthorization Act of 2016. The legislation contains a provision calling for federal pre-emption of State or local laws which may affect the ability of local governments to regulate the design, ownership, and operation of drones. As with all pending legislation, any of the provisions could change significantly before passage. Therefore, the Grand Jury advises that the County and cities in Orange County monitor the legislation as they consider responses to the recommendations of this report.

California State Drone Laws

Although a number of bills regulating the use of drones have passed in both houses of the California legislature, Governor Jerry Brown signed only one: AB 856, which expands privacy protections to prevent paparazzi from flying drones over private property. The Governor stated that existing penal codes cover the criminality of any interference with emergency responders.

The two California laws he refers to are Penal Code 148, sections 148.1, 148.2 and Penal Code 402. Briefly stated, each code says every person who willfully resists or interferes with the lawful efforts of any public officer, peace officer, fireman, or emergency rescue personnel in the discharge or attempts to discharge an official duty is guilty of a misdemeanor (Appendix C,D,E).

The Governor did not rule out future legislation at the state level. He added that while drone technology raises novel issues, it needs to be considered more carefully.

Ordinances in Neighboring Communities

While some states, including California, have taken a go-slow approach, other communities within the state have recognized the inadequacy of this approach by enacting local drone ordinances tailored to specific local conditions (State 1-3). On October 14, 2015, the Los Angeles City Council approved Ordinance Number 183912 of the Los Angeles Municipal Code covering hobbyist/recreational and commercial drones. This ordinance reflects FAA civilian drone guidelines and makes, among other things, three salient points:

1. No Person shall operate any Model Aircraft within the City Los Angeles and within 5 miles of an airport without the prior express authorization of the airport air traffic control tower.
2. No Person shall operate any Model Aircraft within the City of Los Angeles in a manner that interferes with manned aircraft, and shall always give way to any manned aircraft.

3. No Person shall operate any Model Aircraft within the City of Los Angeles more than 400 feet above the earth's surface.

Violation of this ordinance is a misdemeanor, punishable by up to \$1,000 in fines and six months in jail (Appendix A).

Another nearby locality that has enacted a drone ordinance is the city of Poway, in San Diego County. On September 1, 2015 (later updated in October 2015) the Poway City Council approved an ordinance that bans use of recreational drones in certain designated areas during emergency situations, particularly brush fires (Jones, 1-2).

Safety Concerns

Airport Safety

The most serious safety concerns involve interaction between small drones and manned aircraft, especially near airports. The *Bard College Center for Study of the Drone* report is a comprehensive and detailed analysis of incidents involving unmanned aircraft and manned aircraft in the U.S. National Airspace System. Bard College analyzed records from 921 incidents involving drones and manned aircraft in the national airspace, dating from December 17, 2013 to September 12, 2015 (Gettinger, 5). Two hundred forty six (246) of the 340 drones identified in the Bard report were multirotor (i.e. quadcopters, hexacopters, etc.), which are currently the most desirable for the consumer market. These multirotors represent nearly three quarters of the drones involved and are indicative of the potential threat to manned aircraft.

Recent incidents involved a pilot or an air traffic controller spotting a drone flying within or near the flight paths of manned aircraft but not posing an immediate threat of collision. Other encounters involved incidents of manned aircraft traveling close enough to a drone to meet the Federal Aviation Administration's definition of a "near midair collision" or close enough that there was a possible danger of collision. It is important to note over 90% of all incidents occurred *above* 400 feet, the maximum altitude at which hobby drones are allowed to fly.

The Bard College report noted that a majority of the incidents reported occurred within five miles of an airport (prohibited airspace for all drones, regardless of the altitude at which they are flying). While John Wayne Airport was not part of the report, the Bard College report does show that there are a significant number of drones that violate FAA guidelines. With the number of small drones increasing, the potential for lethal incidents also increases. Since Orange County is home to one large, busy airport, John Wayne, and hosts another smaller airport, Fullerton Municipal, this information is cause for local concern (Pilot, 1-2).

Fire and Law Enforcement Safety

A drone in the immediate airspace of any aircraft is a serious, physical threat. In July 2015 firefighting aircraft were grounded for 26 minutes in Southern California because of fear of collisions with five unmanned aerial vehicles that had been seen in the area. It was the fourth time in as many weeks that drones had hampered firefighters in Southern California (Guttman, July 2015). Public safety makes this a big issue. Our first responders need community support as they perform their duties. Dodging drones should not be an obstacle to our county's emergency professionals in how they conduct their business.

Orange County first-responders, Fire, Police and Sheriff, have the same safety concerns as airports. They recognize when drones are encountered at an emergency incident, aircraft operations must be suspended until the hazard can be mitigated. While assisting San Bernardino with the Lake Fire, the Orange County Fire Authority experienced a "near miss." First responders recognize the potential for danger. A police helicopter, tracking a stolen vehicle, could be seriously challenged with a near-miss drone. The drone could be pulled into a helicopter engine or collide with its windshield. A fire helicopter, facing the same danger, could be forced off-course in order to avoid impact.

The Grand Jury learned another concern of custodial law enforcement is the potential use of drones to smuggle contraband into detention facilities. One deputy described an incident in which a drone was used to drop a tennis ball filled with drugs into the recreation area.

No one wants a mid-air collision to be the wake-up call for our communities. FAA Administrator Michael Huerta said, "If you don't know the rules, how can you follow them?" Accidents are inevitable in the absence of carefully considered local ordinances and educational opportunities for hobbyist drone owners.

Personal Safety Concerns

Drones flying over large public gatherings at the beach or sporting events may also pose a potential for injury or damage if the drone is operated improperly. On December 23, 2015, a World Cup ski race was interrupted when a drone fell out of the sky just missing a racer during his run (Associated Press). While this incident involved a commercial drone, it indicates the potential threat drones pose to personal safety.

Drone Ordinance Survey

The Grand Jury sent a ten question drone survey to all 34 cities in the County, as well as the Orange County Fire Authority, John Wayne Airport, Fullerton Municipal Airport and the Sheriff/Coroner Department. The Grand Jury offered three fact-finding options: schedule a personal visit; schedule a phone interview; or return a written response. The majority of cities responded in writing. Four cities did not answer, creating a response rate of 88%.

The survey questions were divided into three areas: existing policy; experience; and education.

1. Does your agency/department have a policy for the operation of privately-owned drones?
2. Does your agency/department have a policy for the operation of Commercial drones?
3. If there are no policies, why not?
4. Do you feel creating or supporting a drone policy will have a financial impact on your budget? How?
5. Does your agency/department allow first responders to use drones for emergency response?
6. Have there been any reported drone accidents or “near misses” by your agency/department?
7. Have there been any incidents or public complaints involving drones in your jurisdiction?
8. Has physical damage of property, resulting from drone use, been addressed?
9. If a city resident has concerns with a hovering drone, whom should they call or contact?
10. Are there agency-sponsored educational programs available for public awareness regarding the safety and danger factors involved with operating a drone?

The survey used open-ended questions to allow each entity to share knowledge or concerns. The Grand Jury reviewed and categorized all responses for analysis and statistical review. The respondents were as follows: City Managers, Assistant City Manager, Senior Executive Airport Personnel, Assistant Chief of Operations, Chief of Police, Sergeant, and Deputy Chief. An Executive Secretary stated her boss answered “No to everything.”

Responses from the Cities

Policy- Questions #1-5

Does your agency/dept have a policy for the operation of privately-owned drones?

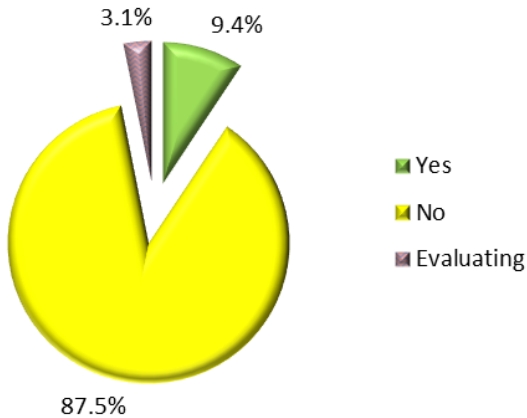


Figure 1

If there are no policies, why not?

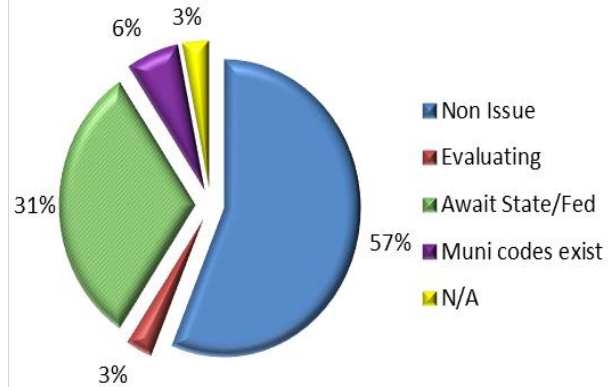


Figure 2

The first five survey questions related to the existence of any policy concerning drones. The results show that the vast majority of Orange County cities have not addressed the presence of small drones. The survey indicated 88% of responding Orange County cities do not have a policy or ordinance that addresses the operation of privately-owned recreational drones (Figure 1).

Fifty seven percent (57%) of responding cities consider drones a non-issue. Examples of comments received from some cities include: “our council has not given us direction”; “we have not experienced any drone problems”; and “there is little to no issue with our police department.” However there are exceptions: Huntington Beach has a municipal code that restricts remote controlled model aircraft, which they are updating to include both private and commercial drones. Dana Point has a municipal code but only in relation to the protection of environmentally sensitive habitat areas. Thirty one percent (31%) of responding cities are interested in a policy while stating they are awaiting State or Federal guidelines (Figure 2). The Orange County Fire Authority agrees a drone poses a collision risk to firefighting aircraft and, if spotted, air operations must temporarily cease. In response to whether or not implementing a drone ordinance would have a budgetary effect, half of those responding do not believe that it would have a significant impact. Those concerned about the impact on their budget cite the following reasons: staff and legal resources needed to create and enforce an ordinance, along with the costs to update websites/newsletters, and creating and hosting community educational workshops.

Experience with Small, Privately Owned Drones- Questions #6-9

Have there been any reported Drone accidents or "near misses" by your agency/Dept?

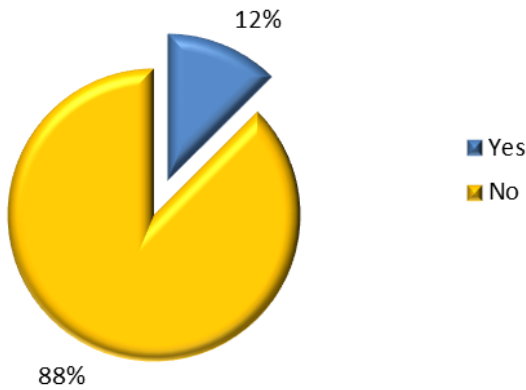


Figure 3

Have there been any incidents or public complaints involving drones in your jurisdiction?

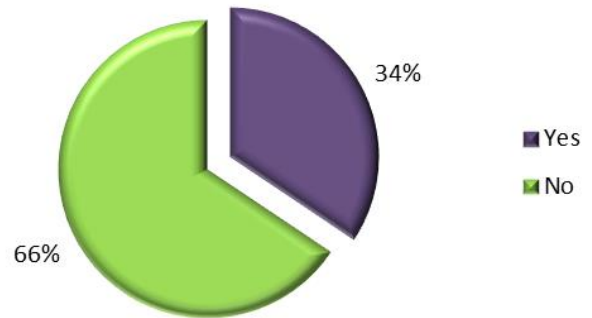


Figure 4

If a city resident has concerns with a hovering drone, whom should they call?

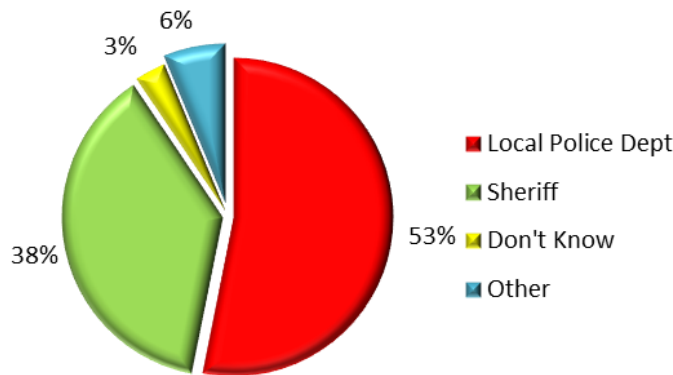


Figure 5

Four of the survey questions asked about experience with drones and whether there were reported incidents or complaints. Eleven of the respondent cities reported complaints involving small drones (Figure 4), including four respondents who reported accidents or near misses (Figure 3).

The FAA now receives more than 100 UAS sightings each month from pilots, citizens, and law enforcement. The Grand Jury survey revealed that Orange County cities received nearly 100

drone-related complaints over a period of one year. The Grand Jury feels it is short-sighted for our county and cities to ignore this emerging concern.

To illustrate one such complaint, consider that Huntington Beach reported the Air Support Unit of their police department employs a helicopter to assist with daily calls for service. This helicopter has experienced several near misses with drones during routine air patrols and at active crime scenes. Huntington Beach also noted that residents have complained about drones hovering over their bedroom windows.

Another beach city also received reports of drones flying over the pier area and recording sunbathers on the beach. On a different occasion, a Go-Pro camera fell from a drone during an event and hit the ground near several people, including children. Consider too, that one city manager reported 37 calls for service involving small drones while another city manager reported 29 complaints. While hosting a large July 4th parade/festival, a city received several complaints of nuisance drones in spite of an event flyer stating “NO DRONES.”

Most respondents identified a law enforcement agency (police/sheriff) as the source to notify if a resident has a drone concern. Other entities responded with answers as varied as Community Services, Code Enforcement, Public Safety, City Manager, 911, and FAA. The Grand Jury noted the lack of education and consistency in the responses. Members of the public who witness potential incidents have no information about how and where to report. The OCSD Bomb Squad said reporting a drone incident is a “major under-reported event.” This failure to report indicates a result of lack of educational information or policy.

Educational Outreach to the Small Drone Community- Question #10

Are there agency-sponsored educational programs available for public awareness regarding the safety and danger factors involved with operating a drone?

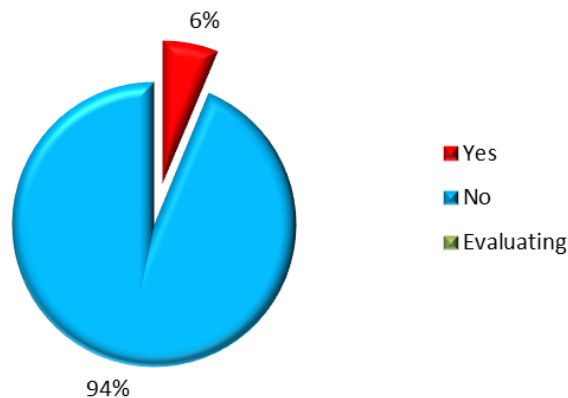


Figure 6

To provide guidance to hobbyists, the FAA has partnered with three of the largest hobby drone manufacturers to create the *Know before You Fly* website www.knowbeforeyoufly.org. This website is heavily promoted by the FAA, hobby drone manufacturers, and responsible hobby drone owners (AMA 1-2). The B4UFLY smartphone application is another educational resource (FAA Releases 1).

In addition to educational resources provided by the FAA, two of the cities reported having educational resources available to educate operators of hobbyist drones. Costa Mesa has a Video/TV production CMTV3. Huntington Beach plans to include drone safety information, along with other safety programs, on their Facebook page. These two cities are the exception. The majority of the cities responded to Question #10 on our survey to the effect that there are no city sponsored educational programs available at this time for public awareness regarding the safety and danger of operating a drone. The various explanations included:

- “Educational materials are available with an online search”
- “We can put an FAA flyer in each mailer that goes out to all residents”
- “The Aircraft Owners and Pilots Association (AOPA) have excellent educational materials”
- “We have a bi-weekly newsletter online, but no drone info on it”
- “Our goal is to distribute information from State and Federal sources”
- “We could consider a quarterly newsletter”
- “The schools should be teaching drone safety”
- “We are a very small department”

The county and cities have a myriad of untapped, inexpensive options with which to speak to the local residents. Notices delivered to residents via postal or electronic mail should contain information on drone safety. FAA- Model Aircraft flyers should be available at libraries, city buildings, police departments, and schools. County and city websites should address safety issues. Parades, festivals and street fairs should promote drone safety.

Additionally, Orange County has nearly 5,000 Homeowners Associations. Most HOAs have a website or newsletter. The Davis-Stirling Common Interest Act suggests each HOA board create a rule to address drone noise, safety and privacy issues. If drones are flown by people outside the association, the HOA would need to go to the city or county to seek a ban. (Davis-Stirling)

Know Before You Fly

Except for a small smattering of inconsequential incidents, there have been no major problems reported. This is good news, considering that airports and fire/law enforcement departments have the most at stake from drone mishaps. Hobby-recreational drones are the “new-kid on the

block.” It is no surprise that 94% of our cities have no educational programs available for public awareness regarding the safety and danger factors involved with flying a drone. Most drone operators want to do the right thing but where are the guides, mentors or teachers? This is a new generation challenge. The safety issues that have surfaced world-wide should elevate this concern to top of the “needs-attention” list. Having a drone ordinance on record would be saying that this is what our community standards are. The public needs to know and our first responders need to feel community support. No one should be at risk because somebody wants a video to go viral.

FINDINGS

In accordance with California Penal Code Section 933 and Section 933.05, the 2015-2016 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 “*Drones: Know Before You Fly*”, the 2015-2016 Orange County Grand Jury has arrived at seven principal findings, as follows:

- F.1.** Recreational drones have greatly increased in number since December 2015 and it is probable their unregulated use will pose significant threats to public safety and privacy in Orange County cities and unincorporated areas.
- F.2.** With the exception of the recent Federal Aviation Administration registration rule, recreational drone owners are largely self-policed, which leads to a wide range of behavior.
- F.3.** Most of the cities and unincorporated areas of the County of Orange do not have a drone ordinance, nor do they have any immediate plans to enact an ordinance in the near future.
- F.4.** Most of the cities provide no educational programs for public awareness of the safety issues connected to recreational drones.
- F.5.** Some Orange County cities, despite recognizing potential issues with drones, are awaiting drone-related legislative action or other guidance by the State of California or FAA before enacting local ordinances.
- F.6.** The FAA-required registration of recreational drones provides a useful tool for local enforcement of drone ordinances.

F.7. Orange County cities have not established a procedure for reporting drone incidents, which results in under-reporting of drone safety and privacy events.

RECOMMENDATIONS

In accordance with California Penal Code Section 933 and Section 933.05, the 2015-2016 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 “*Drones: Know Before You Fly*”, the 2015-2016 Orange County Grand Jury makes the following nine recommendations:

R.1. Each City Council should direct its City Attorney to provide a report to the city’s police department and City Council on existing laws that can be applied to the use of recreational drones in the city’s jurisdiction by December 30, 2016. (F.2., F.3., F.5., F.6.)

R.2. Each City should adopt a recreational drone ownership and operation ordinance, with regulations similar to those found in Los Angeles City ordinance #183912, by March 31, 2017, to the extent not preempted or superseded by Federal law or Federal regulations. (F.1., F.2., F.3., F.5., F.6.)

R.3. Each City should inform its citizens about laws and ordinances that apply to recreational drone operators through print media, city-related web sites, social media sites and/or public forums by March 31, 2017. (F.4., F.6.)

R.4. Each City should establish and publish on its website a point of contact for drone-related citizen complaints by December 30, 2016. (F.7.)

R.5. Each City should post FAA drone ownership and operation educational links on city-related websites, newsletters, and flyers by December 30, 2016. (F.4.)

R.6. The Orange County Board of Supervisors should direct County Counsel to provide a report to the Orange County Sheriff-Coroner Department and the Board of Supervisors on existing laws that can be applied to the use of recreational drones in county-governed parks and unincorporated areas by December 30, 2016. (F.2., F.3., F.6.)

R.7. The County should adopt a recreational drone ownership and operation ordinance similar to Los Angeles City Ordinance #183912 for the parks and unincorporated areas under its jurisdiction by March 31, 2017, to the extent not preempted or superseded by Federal law or Federal regulations. (F.1., F.2., F.3., F.6.)

R.8. The County should inform its citizens about laws and ordinances that apply to recreational drone operators through print media, County-related web sites, social media sites and/or public forums by March 31, 2017. (F.4., F.6.)

R.9. The County and each City should formally gather data on recreational drone incidents within their jurisdictions and review these data annually and report the results publicly. The first analysis and publication should occur within 1 year of the publication of this report. (F.1., F.2., F.3., F.7.)

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 elected County Official shall comment on the findings and recommendations pertaining to the matters under that elected officials 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), (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:

	Required Respondent	Findings							Recommendations									
		F 1	F 2	F 3	F 4	F 5	F 6	F 7	R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	
1	City of Aliso Viejo	X	X	X	X	X	X	X	X	X	X	X	X	X				X
2	City of Anaheim	X	X	X	X	X	X	X	X	X	X	X	X	X				X
3	City of Brea	X	X	X	X	X	X	X	X	X	X	X	X	X				X
4	City of Buena Park	X	X	X	X	X	X	X	X	X	X	X	X	X				X
5	City of Costa Mesa	X	X	X	X	X	X	X	X	X	X	X	X	X				X
6	City of Cypress	X	X	X	X	X	X	X	X	X	X	X	X	X				X
7	City of Dana Point	X	X	X	X	X	X	X	X	X	X	X	X	X				X
8	City of Fountain Valley	X	X	X	X	X	X	X	X	X	X	X	X	X				X
9	City of Fullerton	X	X	X	X	X	X	X	X	X	X	X	X	X				X
10	City of Garden Grove	X	X	X	X	X	X	X	X	X	X	X	X	X				X
11	City of Huntington Beach	X	X	X	X	X	X	X	X	X	X	X	X	X				X
12	City of Irvine	X	X	X	X	X	X	X	X	X	X	X	X	X				X
13	City of La Habra	X	X	X	X	X	X	X	X	X	X	X	X	X				X
14	City of La Palma	X	X	X	X	X	X	X	X	X	X	X	X	X				X
15	City of Laguna Beach	X	X	X	X	X	X	X	X	X	X	X	X	X				X
16	City of Laguna Hills	X	X	X	X	X	X	X	X	X	X	X	X	X				X
17	City of Laguna Niguel	X	X	X	X	X	X	X	X	X	X	X	X	X				X
18	City of Laguna Woods	X	X	X	X	X	X	X	X	X	X	X	X	X				X
19	City of Lake forest	X	X	X	X	X	X	X	X	X	X	X	X	X				X

Drones: Know Before You Fly

	Required Respondent	Findings							Recommendations								
		F 1	F 2	F 3	F 4	F 5	F 6	F 7	R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9
20	City of Los Alamitos	X	X	X	X	X	X	X	X	X	X	X	X				X
21	City of Mission Viejo	X	X	X	X	X	X	X	X	X	X	X	X				X
22	City of Newport Beach	X	X	X	X	X	X	X	X	X	X	X	X				X
23	City of Orange	X	X	X	X	X	X	X	X	X	X	X	X				X
24	City of Placentia	X	X	X	X	X	X	X	X	X	X	X	X				X
25	City of Rancho Santa Margarita	X	X	X	X	X	X	X	X	X	X	X	X				X
26	City of San Clemente	X	X	X	X	X	X	X	X	X	X	X	X				X
27	City of San Juan Capistrano	X	X	X	X	X	X	X	X	X	X	X	X				X
28	City of Santa Ana	X	X	X	X	X	X	X	X	X	X	X	X				X
29	City of Seal Beach	X	X	X	X	X	X	X	X	X	X	X	X				X
30	City of Stanton	X	X	X	X	X	X	X	X	X	X	X	X				X
31	City of Tustin	X	X	X	X	X	X	X	X	X	X	X	X				X
32	City of Villa Park	X	X	X	X	X	X	X	X	X	X	X	X				X
33	City of Westminster	X	X	X	X	X	X	X	X	X	X	X	X				X
34	City of Yorba Linda	X	X	X	X	X	X	X	X	X	X	X	X				X
35	OC Board of Supervisors	X	X	X			X							X	X	X	X

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APPENDICES

Appendix A: Los Angeles City Municipal Ordinance

ORDINANCE NO. 183912

An ordinance adding Section 56.31 to Article 6 of Chapter V of the Los Angeles Municipal Code to impose community-based safety requirements on the operation of Model Aircraft and to impose restrictions consistent with certain Federal Aviation Rules on the operation of both Model Aircraft and Civil Unmanned Aircraft Systems (UASs), commonly known as drones.

WHEREAS, the operation of Unmanned Aircraft such as Model Aircraft and Civil UASs can at times pose a hazard to full-scale aircraft in flight and to persons and property on the ground; and

WHEREAS, imposing community-based safety requirements on the operation of Model Aircraft and imposing restrictions on the operation of both Model Aircraft and Civil UASs consistent with Federal Aviation Rules is necessary to mitigate such risks and to protect the public from the hazards associated with the operation of Unmanned Aircraft.

NOW, THEREFORE,

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. A new Section 56.31 is added to Article 6 of Chapter V of the Los Angeles Municipal Code to read as follows:

SEC. 56.31. UNMANNED AIRCRAFT SYSTEMS.

(a) For purposes of this section:

1. **"Unmanned Aircraft"** shall mean an aircraft, including, but not limited to, an aircraft commonly known as a drone, that is operated without the possibility of direct human intervention from within or on the aircraft.

2. **"Unmanned Aircraft System"** shall mean an Unmanned Aircraft and associated elements, including, but not limited to, any communication links and components that control the Unmanned Aircraft.

3. **"Person"** shall have the same meaning as set forth in Subsection (a) of Section 11.01 of this Code.

4. **"Model Aircraft"** shall mean an Unmanned Aircraft or Unmanned Aircraft System operated by any Person strictly for hobby or recreational purposes.

5. **"Civil UAS"** shall mean an Unmanned Aircraft or Unmanned Aircraft System operated by any Person for any purposes other than strictly

hobby or recreational purposes, including, but not limited to, commercial purposes or in furtherance of, or incidental to, any business or media service or agency.

6. **“Public UAS”** shall mean an Unmanned Aircraft or Unmanned Aircraft System operated by any public agency for government related purposes.

(b) The following shall apply to the operation of any Model Aircraft within the City of Los Angeles:

1. No Person shall operate any Model Aircraft within the City of Los Angeles and within 5 miles of an airport without the prior express authorization of the airport air traffic control tower.

2. No Person shall operate any Model Aircraft within the City of Los Angeles in a manner that interferes with manned aircraft, and shall always give way to any manned aircraft.

3. No Person shall operate any Model Aircraft within the City of Los Angeles beyond the visual line of sight of the person operating the Model Aircraft. The operator must use his or her own natural vision (which includes vision corrected by standard eyeglasses or contact lenses) to observe the Model Aircraft. People other than the operator may not be used in lieu of the operator for maintaining visual line of sight. Visual line of sight means that the operator has an unobstructed view of the Model Aircraft. The use of vision-enhancing devices, such as binoculars, night vision goggles, powered vision magnifying devices, and goggles or other devices designed to provide a “first-person view” from the model, do not constitute the visual line of sight of the person operating the Model Aircraft.

4. No Person shall operate any Model Aircraft within the City of Los Angeles other than during daylight hours defined as between official sunrise and official sunset for local time.

5. No Person shall operate any Model Aircraft within the City of Los Angeles more than 400 feet above the earth’s surface.

6. Excluding takeoff and landing, no Person shall operate any Model Aircraft within the City of Los Angeles closer than 25 feet to any individual, except the operator or the operator’s helper(s).

(c) The following shall apply to the operation of any Model Aircraft or Civil UAS within the City of Los Angeles:

1. No Person shall operate any Model Aircraft or Civil UAS within the City of Los Angeles in a manner that is prohibited by any federal statute or regulation governing aeronautics.

2. No Person shall operate any Model Aircraft or Civil UAS within the City of Los Angeles in violation of any temporary flight restriction (TFR) or notice to airmen (NOTAM) issued by the Federal Aviation Administration.

3. No Person shall operate any Model Aircraft or Civil UAS within the City of Los Angeles in a careless or reckless manner so as to endanger the life or property of another. The standard for what constitutes careless and reckless operation under this section shall be the same as the standard set forth in any federal statutes or regulations governing aeronautics including but not limited to Federal Aviation Rule 91.13.

(d) It shall be unlawful for any Person to violate or fail to comply with this section. Any Person violating the provisions of this section shall be guilty of a misdemeanor and subject to the provisions of Subsection (m) of Section 11.00 of this Code.

(e) This section shall not apply to any Public UAS operated pursuant to, and in compliance with, the terms and conditions of any current and enforceable authorization granted by the Federal Aviation Administration.

Sec. 2. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of OCT 14 2015.

HOLLY L. WOLCOTT, City Clerk


By  Deputy

Approved 10/22/15

 Mayor

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By 
JANET KARKANEN
Deputy City Attorney

Date SEP 16 2015

File No. 15-0927

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DECLARATION OF POSTING ORDINANCE

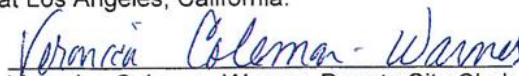
I, VERONICA COLEMAN-WARNER, state as follows: I am, and was at all times hereinafter mentioned, a resident of the State of California, over the age of eighteen years, and a Deputy City Clerk of the City of Los Angeles, California.

Ordinance No.183912 – Adding Section 56.31 to Article 6 of Chapter V of the Los Angeles Municipal Code to impose community-based safety requirements on the operation of Model Aircraft and to impose restrictions consistent with certain Federal Aviation Rules on the operation of both Model Aircraft and Civil Unmanned Aircraft Systems, commonly known as drones - a copy of which is hereto attached, was finally adopted by the Los Angeles City Council on October 14, 2015, and under the direction of said City Council and the City Clerk, pursuant to Section 251 of the Charter of the City of Los Angeles and Ordinance No. 172959, on October 23, 2015 I posted a true copy of said ordinance at each of the three public places located in the City of Los Angeles, California, as follows: 1) one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; 2) one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; 3) one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

Copies of said ordinance were posted conspicuously beginning on October 23, 2015 and will be continuously posted for ten or more days.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 23rd day of October, 2015 at Los Angeles, California.


Veronica Coleman-Warner, Deputy City Clerk

Ordinance Effective Date: December 2, 2015

Council File No. 15-0927

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Appendix B: Acronyms/Glossary

Air Space	From the ground up. Hobby drones need to remain under 400 feet from ground.
AMA	Academy of Model Aircraft
Civil Aviation drones	Numerous uses include surveying of crops, filmmaking, search and rescue, inspecting power lines, counting wildlife, law enforcement, scientific research, disaster relief and wildfires, to name a few.
Civil UAS	Unmanned aerial system (drone) used by <u>private sector</u> (non-government) for scientific research, company/business/non-profit, and private university.
COA	Certification of Authorization. FAA grants approval for specific flight operation.
Commercial drone	Drone used with the expectation of a sale, financial gain, or other consideration.
Commercial operator	Person who operates a drone for financial gain.
DOT	Department of Transportation
Drone	An unmanned aerial vehicle (UAV), without a human pilot aboard. Its flight is controlled either autonomously-autopilot- by onboard computers or by the remote control of a pilot on the ground or in another vehicle. The typical launch and recovery method of an unmanned aircraft is by the function of an automatic system or an external operator on the ground.
FAA	Federal Aviation Authority regulates U.S. airspace and defines any unmanned flying craft as a UAV. FAA is an agency of DOT.
First responder	First member of emergency response team to be on the scene of an accident or emergency.
FPV	First Person View-controlling a UAV from operator's viewpoint.
FMRA	FAA Modernization and Reform Act.
Hobbyist drone	Used for hobby/ recreational purpose. Not flown for a profit endeavor.
Manned aircraft	Human on board aircraft to operate it. (Pilot)

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Model aircraft	Unmanned aircraft that is capable of sustained flight in the atmosphere, flown within visual line of sight of the person operating the aircraft and flown for hobby or recreational purposes.
Municipal code	Laws that are enacted and enforced by a city or county. Can be an ordinance.
No-Fly fields/zones	Air space off limits to all aircraft; when the Pope visited the USA, numerous NO-FLY Zones were declared by FAA.
Public UAS	Unmanned aerial system (drone) owned by our <u>government</u> and commonly used by law enforcement, firefighting, border patrol, disaster relief, search and rescue, Public University. Requires FAA certification.
RC	A remote control. A device used to issue commands (wirelessly) from a short distance.
RCA	Radio-Controlled Aircraft is controlled with a handheld radio transmitter, which communicates with a receiver aboard the aircraft
Recreational Drone	Used for hobby purpose; not flown for a profit-making endeavor.
sUAS	Small unmanned aerial system primarily used in civil and commercial operations, due to versatility, low initial cost and operating expenses. They weigh less than 55 pounds.
UAS	Unmanned aerial system, an aircraft without a human pilot and emphasizes other elements such as ground control stations, data links and other support equipment; also known as a drone
UAV	Unmanned aerial vehicle, an aircraft without a human pilot; commonly known as a drone. Can be remotely piloted or on autopilot.
VLOS	Visual line of site means keeping the UAS in visual-line-of-site at all times; no flying into clouds, fog, behind buildings, trees, etc.; also means unaided except for prescription glasses/contacts or sunglasses.

Appendix C: CA Penal Code Section 148.1

148.1. (a) Any person who reports to any peace officer listed in Section 830.1 or 830.2, or subdivision (a) of Section 830.33, employee of a fire department or fire service, district attorney, newspaper, radio station, television station, deputy district attorney, employees of the Department of Justice, employees of an airline, employees of an airport, employees of a railroad or bus line, an employee of a telephone company, occupants of a building or a news reporter in the employ of a newspaper or radio or television station, that a bomb or other explosive has been or will be placed or secreted in any public or private place, knowing that the report is false, is guilty of a crime punishable by imprisonment in a county jail not to exceed one year, or pursuant to subdivision (h) of Section 1170.

(b) Any person who reports to any other peace officer defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 that a bomb or other explosive has been or will be placed or secreted in any public or private place, knowing that the report is false, is guilty of a crime punishable by imprisonment in a county jail not to exceed one year or pursuant to subdivision (h) of Section 1170 if (1) the false information is given while the peace officer is engaged in the performance of his or her duties as a peace officer and (2) the person providing the false information knows or should have known that the person receiving the information is a peace officer.

(c) Any person who maliciously informs any other person that a bomb or other explosive has been or will be placed or secreted in any public or private place, knowing that the information is false, is guilty of a crime punishable by imprisonment in a county jail not to exceed one year, or pursuant to subdivision (h) of Section 1170.

(d) Any person who maliciously gives, mails, sends, or causes to be sent any false or facsimile bomb to another person, or places, causes to be placed, or maliciously possesses any false or facsimile bomb, with the intent to cause another to fear for his or her personal safety or the safety of others, is guilty of a crime punishable by imprisonment in a county jail not to exceed one year, or pursuant to subdivision (h) of Section 1170.

(Amended by Stats. 2011, Ch. 15, Sec. 259. (AB 109) Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)

Appendix D: CA Penal Code Section 148.2

148.2. Every person who willfully commits any of the following acts at the burning of a building or at any other time and place where any fireman or firemen or emergency rescue personnel are discharging or attempting to discharge an official duty, is guilty of a misdemeanor:

1. Resists or interferes with the lawful efforts of any fireman or firemen or emergency rescue personnel in the discharge or attempt to discharge an official duty.
2. Disobeys the lawful orders of any fireman or public officer.
3. Engages in any disorderly conduct which delays or prevents a fire from being timely extinguished.
4. Forbids or prevents others from assisting in extinguishing a fire or exhorts another person, as to whom he has no legal right or obligation to protect or control, from assisting in extinguishing a fire.

(Amended by Stats. 1973, Ch. 471.)

Appendix E: CA Penal Code Section 402

402. (a) Every person who goes to the scene of an emergency, or stops at the scene of an emergency, for the purpose of viewing the scene or the activities of police officers, firefighters, emergency medical, or other emergency personnel, or military personnel coping with the emergency in the course of their duties during the time it is necessary for emergency vehicles or those personnel to be at the scene of the emergency or to be moving to or from the scene of the emergency for the purpose of protecting lives or property, unless it is part of the duties of that person's employment to view that scene or activities, and thereby impedes police officers, firefighters, emergency medical, or other emergency personnel or military personnel, in the performance of their duties in coping with the emergency, is guilty of a misdemeanor.

(b) Every person who knowingly resists or interferes with the lawful efforts of a lifeguard in the discharge or attempted discharge of an official duty in an emergency situation, when the person knows or reasonably should know that the lifeguard is engaged in the performance of his or her official duty, is guilty of a misdemeanor.

(c) For the purposes of this section, an emergency includes a condition or situation involving injury to persons, damage to property, or peril to the safety of persons or property, which results from a fire, an explosion, an airplane crash, flooding, windstorm damage, a railroad accident, a traffic accident, a power plant accident, a toxic chemical or biological spill, or any other natural or human-caused event.

(Amended by Stats. 1989, Ch. 214, Sec. 1.)

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Appendix F: Model Aircraft Guidelines

Hobby / Recreational Flying

What Can I Do With My Model Aircraft?

Having fun means flying safely! Hobby or recreational flying doesn't require FAA approval but you must follow safety guidelines. Any other use requires FAA authorization.

AVOID DOING ANYTHING HAZARDOUS TO OTHER AIRPLANES OR PEOPLE AND PROPERTY ON THE GROUND

- ✔ **DO** fly a model aircraft/UAS at the local model aircraft club
- ✔ **DO** take lessons and learn to fly safely
- ✔ **DO** contact the airport or control tower when flying within 5 miles of the airport
- ✔ **DO** fly a model aircraft for personal enjoyment
- ✘ **DON'T** fly near manned aircraft
- ✘ **DON'T** fly beyond line of sight of the operator
- ✘ **DON'T** fly an aircraft weighing more than 55 lbs unless it's certified by an aeromodelling community-based organization
- ✘ **DON'T** fly contrary to your aeromodelling community-based safety guidelines
- ✘ **DON'T** fly model aircraft for payment or commercial purposes



For more information about safety training and guidelines, visit www.knowbeforeyoufly.org

For more information, visit www.faa.gov/uas



Federal Aviation Administration

FA4022-13H-1228

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Appendix G: Academy of Model Aeronautics National Model Aircraft Safety Code

Effective January 1, 2014

A. **GENERAL:** A model aircraft is a non-human-carrying aircraft capable of sustained flight in the atmosphere. It may not exceed limitations of this code and is intended exclusively for sport, recreation, education and/or competition. All model flights must be conducted in accordance with this safety code and any additional rules specific to the flying site.

1. Model aircraft will not be flown:

- (a) In a careless or reckless manner.
- (b) At a location where model aircraft activities are prohibited.

2. Model aircraft pilots will:

- (a) Yield the right of way to all human-carrying aircraft.
- (b) See and avoid all aircraft and a spotter must be used when appropriate. (AMA Document #540-D.)
- (c) Not fly higher than approximately 400 feet above ground level within three (3) miles of an airport without notifying the airport operator.
- (d) Not interfere with operations and traffic patterns at any airport, heliport or seaplane base except where there is a mixed use agreement.
- (e) Not exceed a takeoff weight, including fuel, of 55 pounds unless in compliance with the AMA Large Model Airplane program. (AMA Document 520-A.)
- (f) Ensure the aircraft is identified with the name and address or AMA number of the owner on the inside or affixed to the outside of the model aircraft. (This does not apply to model aircraft flown indoors.)
- (g) Not operate aircraft with metal-blade propellers or with gaseous boosts except for helicopters operated under the provisions of AMA Document #555.
- (h) Not operate model aircraft while under the influence of alcohol or while using any drug that could adversely affect the pilot's ability to safely control the model.
- (i) Not operate model aircraft carrying pyrotechnic devices that explode or burn, or any device which propels a projectile or drops any object that creates a hazard to persons or property.

Exceptions:

- Free Flight fuses or devices that burn producing smoke and are securely attached to the model aircraft during flight.
- Rocket motors (using solid propellant) up to a G-series size may be used provided they remain attached to the model during flight. Model rockets may be flown in accordance with the National Model Rocketry Safety Code but may not be launched from model aircraft.
- Officially designated AMA Air Show Teams (AST) are authorized to use devices and practices as defined within the Team AMA Program Document. (AMA Document #718.)
- (j) Not operate a turbine-powered aircraft, unless in compliance with the AMA turbine regulations. (AMA Document #510-A.)

3. Model aircraft will not be flown in AMA sanctioned events, air shows or model demonstrations unless:

- (a) The aircraft, control system and pilot skills have successfully demonstrated all maneuvers intended or anticipated prior to the specific event.
- (b) An inexperienced pilot is assisted by an experienced pilot.

4. When and where required by rule, helmets must be properly worn and fastened. They must be OSHA, DOT, ANSI, SNELL or NOCSAE approved or comply with comparable standards.

B. RADIO CONTROL (RC)

1. All pilots shall avoid flying directly over unprotected people, vessels, vehicles or structures and shall avoid endangerment of life and property of others.
2. A successful radio equipment ground-range check in accordance with manufacturer's recommendations will be completed before the first flight of a new or repaired model aircraft.

3. At all flying sites a safety line(s) must be established in front of which all flying takes place. (AMA Document #706.)
 - (a) Only personnel associated with flying the model aircraft are allowed at or in front of the safety line.
 - (b) At air shows or demonstrations, a straight safety line must be established.
 - (c) An area away from the safety line must be maintained for spectators.
 - (d) Intentional flying behind the safety line is prohibited.
4. RC model aircraft must use the radio-control frequencies currently allowed by the Federal Communications Commission (FCC). Only individuals properly licensed by the FCC are authorized to operate equipment on Amateur Band frequencies.
5. RC model aircraft will not knowingly operate within three (3) miles of any pre-existing flying site without a frequency-management agreement. (AMA Documents #922 and #923.)
6. With the exception of events flown under official AMA Competition Regulations, excluding takeoff and landing, no powered model may be flown outdoors closer than 25 feet to any individual, except for the pilot and the pilot's helper(s) located at the flightline.
7. Under no circumstances may a pilot or other person touch an outdoor model aircraft in flight while it is still under power, except to divert it from striking an individual.
8. RC night flying requires a lighting system providing the pilot with a clear view of the model's attitude and orientation at all times. Hand-held illumination systems are inadequate for night flying operations.
9. The pilot of an RC model aircraft shall:
 - (a) Maintain control during the entire flight, maintaining visual contact without enhancement other than by corrective lenses prescribed for the pilot.
 - (b) Fly using the assistance of a camera or First-Person View (FPV) only in accordance with the procedures outlined in AMA Document #550.
 - (c) Fly using the assistance of autopilot or stabilization system only in accordance with the procedures outlined in AMA Document #560.

C. FREE FLIGHT

1. Must be at least 100 feet downwind of spectators and automobile parking when the model aircraft is launched.
2. Launch area must be clear of all individuals except mechanics, officials, and other fliers.
3. An effective device will be used to extinguish any fuse on the model aircraft after the fuse has completed its function.

D. CONTROL LINE

1. The complete control system (including the safety thong where applicable) must have an inspection and pull test prior to flying.
2. The pull test will be in accordance with the current Competition Regulations for the applicable model aircraft category.
3. Model aircraft not fitting a specific category shall use those pull-test requirements as indicated for Control Line Precision Aerobatics.
4. The flying area must be clear of utility wires or poles and a model aircraft will not be flown closer than 50 feet to any above-ground electric utility lines.
5. The flying area must be clear of all nonessential participants and spectators before the engine is started.

**OUR BROTHERS' KEEPER:
A LOOK AT THE CARE AND TREATMENT
OF MENTALLY ILL INMATES IN ORANGE
COUNTY JAILS**



GRAND JURY 2015-2016

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EXECUTIVE SUMMARY

Orange County jails have become de facto mental health care treatment facilities. Nationally, the number of individuals with serious mental health issues in prisons and jails now exceeds the number in state psychiatric hospitals tenfold. One official confirmed to the Grand Jury that jail is the primary treatment facility for mental health issues in the Orange County community. According to a local father, who became an advocate for people with mental illnesses after his son took his own life in 2014, “Our [Orange County] jail is the 8th largest mental health facility in the country” (Gerda, March 2016).

Jails are generally short-term city or county-level facilities housing inmates who are awaiting trial or sentencing, as well as those who are serving relatively brief sentences, usually less than one year (Urban, 2015). Orange County jails house approximately 6,000 inmates at any given time. Approximately 20% (1,200) of those inmates have some type of documented mental health diagnosis. According to the Orange County Health Care Agency, from January 2015 through October 2015, 10,586 persons who entered the Orange County Jail system were identified as having a mental health diagnosis. An additional 2,962 inmates were diagnosed with acute mental illness, for a staggering total of 13,548 mentally ill inmates moving through the Orange County jails over a 10 month period. Despite this high number, only one of the Orange County Jails, the Intake and Release Center, contains a designated mental health unit for male inmates. Approximately 89% of male inmates with a diagnosed mental illness are housed in the general jail population. They may receive prescribed medication to help stabilize and/or alleviate their psychiatric symptoms, but they do not receive therapeutic treatment specific to their mental illness through structured programs.

Educational programs are available in varying forms for general population inmates but the focus of these programs is not on mental health therapy, but rather on general rehabilitation, regardless of mental health status. In fact, therapeutic treatment for male mentally ill inmates is reserved for a maximum of 10 inmates housed in the Intake and Release Center’s Crisis Stabilization Unit on Mod L. This is less than 1% of the total mental health population in the Orange County jails.

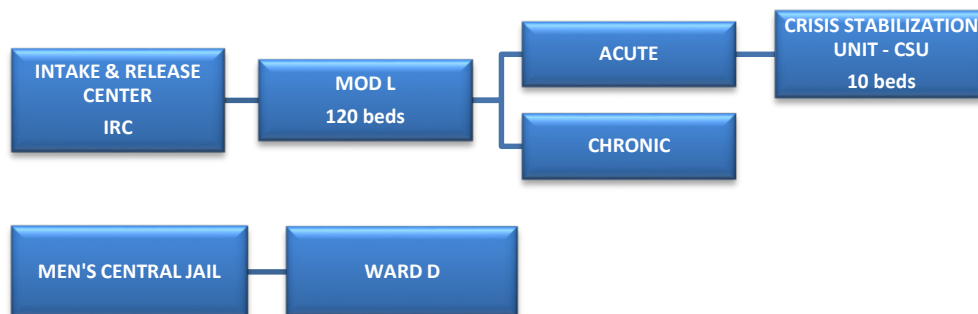


Figure 1 – Orange County Jail Men’s Mental Health Treatment Areas

The care and treatment of criminal offenders with mental health issues is under great scrutiny across the United States. In Orange County, by default, their care is left in large part to law enforcement and Correctional Health Services. The Grand Jury studied several factors that affect this care and treatment, including therapy options, laws and statutes, clinical staffing, court and community resources, and data collection/analysis.

In 2008, the United States Department of Justice (DOJ) initiated an investigation into Orange County jail conditions, with subsequent visits in 2010 and 2013. The DOJ provided written findings in 2014, which included concerns focused on limited mental health care options in the Orange County jails. In particular, the report cited the need to provide improved treatment programs for mentally ill inmates.

Through the process of investigation and interviews, along with a review of the 2014 Department of Justice findings, the Grand Jury found that the jail system provides treatment services to a small percentage of the total inmate population diagnosed with some type of mental illness. The Grand Jury has provided a number of recommendations to improve therapeutic treatment. These include developing and implementing:

- Therapeutic and educational programs and curriculum specific to the needs of mentally ill inmates throughout the jail system
- A system for the collection and analysis of data related to the mentally ill population
- A debriefing protocol aimed at decreasing safety cell use
- A plan to address outstanding issues identified by the Department of Justice
- A plan to expand the number and type of Collaborative Courts

BACKGROUND

The National Alliance on Mental Illness (NAMI) defines mental illness as a condition that impacts a person's thinking, feeling or mood and may affect his or her ability to relate to others and function on a daily basis. Each person will have different experiences, even people with the same diagnosis (National, 2016).

As early as 1694, legislation passed by the Massachusetts Bay Colony authorized confinement in jail for any person "so furiously mad as to render it dangerous to the peace or the safety of the good people for such lunatic persons to go at large" (Treatment, 2014). By the 1820s a shift occurred and many Americans believed putting mentally ill people in prisons and jails was inhumane and uncivilized. Dorothea Dix led the reform movement, asserting effective treatment of the mentally ill is not possible in prison and jails and the people running the prisons and jails

were not trained to provide such treatment. By 1847 it was generally accepted that mentally ill people belonged out of jails and in mental hospitals, which were mostly state run.

Seventy-five (75) public psychiatric hospitals were established by 1880, when there were 50 million people living in the United States (as of April 30, 2016 there were 33,730 million). At that time, most mentally ill persons who had previously been in jails had been transferred to state mental hospitals and thus, “insane persons” constituted only 0.7 percent of the American prison and jail population. For slightly over a hundred years people previously housed in jails were relocated to mental hospitals for treatment.

This practice began to change in the 1960s with the “deinstitutionalization” of mental hospitals. According to the Treatment Advocacy Center 2014 study, because the majority of patients being discharged from hospitals were not given follow-up psychiatric care and relapsed into psychosis, some inevitably committed misdemeanor or felony acts, usually associated with their untreated mental illness, and were arrested. By the early 1970s the disastrous effects of closing state run mental hospitals were becoming apparent. The situation has continued to deteriorate until present day, where society has, by default, reverted to the inhumane solution arrived at in 1694 by determining that the most appropriate care and treatment modality for arrestees with mental illness is prison or jail (Treatment, 2014).

As the jails struggle to adapt to the overwhelming challenges of treating mentally ill inmates in an environment that is traditionally punitive rather than therapeutic, they are held accountable not only in the court of public opinion, but also by the Department of Justice (DOJ). The DOJ recently reached a settlement with nearby Los Angeles County, in *United States of America v County of Los Angeles and Los Angeles County Sheriff Jim McDonnell, in his Official Capacity (2015)* requiring the implementation of sweeping mental health care reforms throughout the county jail system. The investigation determined a pattern of constitutionally deficient mental health care for prisoners, among other inadequate practices (Joint, 2015). This settlement puts neighboring counties, including Orange County, on notice that the Department of Justice is keeping a close eye on the care and treatment of mentally ill inmates.

Over time, the Orange County Health Care Agency, Orange County Sheriff’s Department, and Orange County Superior Court have looked to programs outside of the jail system and have earmarked money for the establishment of community-based programs and support to enhance the care and treatment of mentally ill persons who have been arrested and incarcerated, or who are at high risk to reoffend. The best examples of treatment for mentally ill arrestees outside of jail are the Collaborative Courts system and the California Forensic Conditional Release Program (CONREP), both of which provide an alternative to jail for people who meet the criteria.

The Grand Jury also reviewed notable laws enacted by the State Legislature which aid in the treatment of mentally ill individuals. Proposition 63, also known as the Mental Health Services Act (MHSA), helps fund many of the voluntary community mental health programs and services in Orange County. Another law, which provides services to chronically mentally ill people, is Laura's Law, also referred to as Assisted Outpatient Treatment (AOT).

Previous Grand Jury Reports

Although previous Grand Juries have looked at the interaction of law enforcement with mentally ill persons outside the jail system, no previous Grand Jury in Orange County has studied in-depth the plight of the mentally ill inmate while he is housed in the Orange County jail system.

Scope of Study

This Grand Jury study focuses on mental health treatment options available to male inmates within the Orange County Jail system (for the purposes of this study, the Women's Jail has been excluded), which includes the following six areas:

1. Care and treatment of mentally ill inmates in the Intake and Release Center, Mod L
2. The role of Correctional Health Services (medical and clinical) staff in the treatment process
3. Inmate education services provided through the Sheriff's Department
4. Sheriff's Department and Correctional Health Services staff training
5. Laws, statutes, and court proceedings related to mental health issues
6. Quality assurance programs

METHODOLOGY

The Grand Jury utilized the following research methods to conduct this study:

Review and Analysis of:

- Current academic studies
- Current newspaper articles
- Research on mental health in the United States
- Research on mental health in the State of California
- Los Angeles and Orange County Department of Justice investigation results

Our Brothers' Keeper: A Look at the Care and Treatment of Mentally Ill Inmates in Orange County Jails

- Sheriff Department policies and procedures
- Correctional Health Services policies and procedures
- Previous Grand Jury reports and responses from County Officials
- Correctional Health Care quality assurance programs
- Sheriff's Department quality assurance programs
- Correctional Health Care and Sheriff Department orientation and training requirements and curriculum
- California Code of Regulations, Title 15 – Crime Prevention and Corrections
- California Penal Code
- Applicable Mental Health Case Law
- Internal documents from Correctional Health Care
- Internal documents from the Sheriff's Department

Interviews with Senior Management in:

- The Sheriff's Department
- Correctional Health Services
- Behavioral Health Services
- Health Care Agency

Interviews with:

- Public Defender staff
- District Attorney staff
- County Counsel staff
- Collaborative Courts staff
- Correctional Services Deputies
- Correctional Health Services providers
- Office of Independent Review

Observation/Tour of:

- Community Collaborative Courts
- Jail facilities/Mod L
- San Bernardino County Sheriff's Department Restoration of Competency (ROC) Program

INVESTIGATION AND ANALYSIS

Department of Justice (DOJ) Involvement with Orange County Jails

In 2008 the Department of Justice (DOJ) initiated an on-site investigation of the Orange County Jail system, with subsequent visits in 2010 and 2013. The investigations focused on use of force and lack of medical care, based on previous incidents that resulted in inmate deaths or other negative outcomes. On March 4, 2014, the Department of Justice sent a close-out letter to the County Executive Officer and the Sheriff, acknowledging that the County had taken “extensive remedial measures” to address the Department of Justice’s concerns. The report highlighted “two important qualifiers to our otherwise positive review of jail conditions” – the use of force and medical care. Under medical care, it cited “a limited array of mental health treatment and housing options, resulting in an over-reliance on unsafe segregation cells and more restrictive interventions” (Department, 2014).

Two Department of Justice concerns stand out: 1. Staffing and housing configuration issues result in poor supervision of certain general population and special needs units; 2. A limited array of mental health treatment options results in over-reliance on unsafe segregation cells and more restrictive intervention.

The DOJ correspondence also cited the following concerns:

- The County has not evaluated jail housing and treatment programs for prisoners with mental illness, nor has it adopted a more integrated therapeutic model. (The Constitution requires a level of treatment that goes beyond just having the most acutely ill seen by medical staff.)
- The system relies heavily on placing the most seriously ill prisoners in isolation cells and offering therapeutic treatment only to those most acutely ill individuals.
- The therapeutic treatment provided may not reach prisoners who may be quite ill, but are also not the most obviously in need of mental health care.
- The jail deals with the most immediate urgent needs, but needs to act to prevent mental health crises and provide adequate transition programs to every inmate who needs it.
- The current system leads to high risk prisoners being housed in unsafe physical settings that are neither therapeutic nor adequately supervised.
- The jail does not provide for a cohesive system of therapy and treatment, which can lead to transition problems for mentally ill prisoners at different stages in their illness and result in unnecessary, restrictive practices (e.g., forced medication).

In a section of the Department of Justice correspondence entitled “Remedial Measures,” several recommendations were proffered. The most pertinent state:

- The County should continue to improve mental health services to provide a more integrated system of care.
- In managing the housing and treatment of prisoners with mental illness, the County should avoid using difficult to observe cells (e.g., the 4th floor isolation cells.) for housing prisoners with mental illness. *(Note: – 4th floor isolation cells on the Men's Central Jail are no longer used for mentally ill inmates, however, safety cells provide a similar function and are equally as restrictive).*
- The County should work with the medical provider to broaden the array of treatment and housing options.
- The most acutely ill prisoners will require the most intensive supervision but the jail also needs more intermediate levels of care and supervision for prisoners who may be more stable, but are still unable to live safely in general population. *(Note: – At this time the only housing that meets this recommendation is Ward D on the Men's Central Jail, which has 16 designated mental health beds).*

Through investigation and interviews, the Grand Jury concluded that the therapeutic concerns identified in the 2014 Department of Justice report, along with the recommended remedial measures, have only been partially implemented. In order to provide the level of therapeutic treatment recommended by the Department of Justice, the Grand Jury believes all concerns and recommendations should be formally implemented by the Sheriff's Department and Correctional Health Services.

Mod L Care and Treatment of Inmates with Mental Health Issues

According to the Stanford Law School Three Strikes Project, which poses the question, "When did prisons become acceptable mental healthcare facilities?" mentally ill people who find themselves in the jail system tend to be subjected to far harsher sentencing than people without a mental illness who commit the same crime. This study also asserts that mentally ill inmates are more likely to be sexually assaulted, have higher suicide rates, and commit more rule violations that result in harsh disciplinary action. The Grand Jury learned through research that people unable to navigate the complex dynamics of prison life need to be housed in an area supervised by professionals who understand and can treat their special needs, regardless of the circumstances that brought them to incarceration. The Grand Jury interviewed many Correctional Health Services staff members from several disciplines and found that they demonstrated professionalism, sensitivity to their unique clientele, and a desire to achieve quality standards.

The Sheriff's Department and the Health Care Agency/Correctional Health Services have established a Memorandum of Understanding which details the specific tenets for provision of medical and mental health care and treatment throughout the Orange County jail structure. Health care professionals, including psychiatrists, nurses, social workers, marriage/family

therapists, and mental health specialists/psychiatric technicians are available on Mod L in some combination 24 hours a day, seven days a week to address medical and nursing needs as well as provide case management services. Psychiatrists are assigned exclusively to Mod L. nurse practitioners are utilized throughout the rest of the Intake and Release Center and at other Orange County jail facilities to provide mental health medical care.

Each person who enters the jail system receives a medical screening during the booking process, which includes identifying symptoms and/or history of mental illness. Clinical staff completes a more comprehensive mental health assessment when initial concerns are identified. Based on their own assessment and information gathered, medical personnel determine medication needs, provide input on housing designation, and make decisions as to whether a person might require a psychiatric hold order.

Mod L and Ward D are the only designated male mental health treatment areas for all of the Orange County jails. Mod L is located at the Intake and Release Center and Ward D is located nearby, at the Men's Central Jail. Mod L houses three levels of mentally ill inmates – crisis, acute, and chronic. It is made up of six sectors, for a total of 120 beds. Mod L also houses a small number of inmates who have been accused of a felony crime but were deemed incompetent to stand trial (IST). The Crisis Stabilization Unit is an acute unit located within the Mod L sector. It contains ten designated beds for the most seriously mentally ill. Ward D, which has 16 beds, is considered a transition unit for chronically ill inmates who are not ready to be housed with the general population.

Given the high number of inmates with a documented mental health diagnosis (approximately 1,200) and the limited number of beds on Mod L, it is inevitable that most inmates with a mental health diagnosis will be housed somewhere other than Mod L or Ward D. This leaves approximately 89% of jail inmates with a mental health condition housed within the general population of the jails.

Due to the limited number of beds for mentally ill inmates, psychiatrists assigned to Mod L must constantly reassess each inmate's mental health needs. Inmates who stabilize are reassigned to the general jail population. Correctional Health Services and Sheriff's Department staff collaborate to reassign inmates from the Crisis Stabilization Unit, whose needs are less critical than a new arrival's, to another section of Mod L, or they place them directly into the general housing area. Several staff told the Grand Jury that despite the jail and Correctional Health staff's best efforts to maintain the correct balance, with limited space for mental health care, inmates transferred to general housing areas often return to Mod L after failed attempts to integrate.

Safety Cells in Mod L

Inmates in Mod L are assigned single bed cells. An inmate may be moved to a safety cell temporarily to prevent imminent harm to self or others. Although safety cells are extremely isolating, they are not considered isolation cells. Sheriff's staff uses isolation cells in the general population for inmate discipline. Isolation cells have a bed, a sink and a toilet, which safety cells lack. Safety cells are located in three areas throughout the jail system – Intake and Release Center Triage, Intake and Release Center Mod L, and the Women's Jail. For the purposes of this study, the Grand Jury concentrated on the three safety cells located in Mod L.

A safety cell can be described as a small locked cell with padded walls from floor to ceiling, a closed viewing panel, food slot, and a thin, bare mattress on the floor next to a grated hole in the floor, which serves as a toilet. The cell padding will not prevent self-injury, but it may lessen the effect depending upon how much time is spent trying to self-inflict injury between 15 minute observation periods. There is no sink for washing hands before meals or after using the toilet, and Correctional Health Services staff verified to the Grand Jury there is no process in place for ensuring the opportunity to wash hands. Staff who complete observation rounds at 15 minute intervals provide access to toilet paper, and flush the toilet from outside the cell. There is a light on inside the safety cell at all times. Cameras are also located in the cell so the person can be observed from the nursing station. As a suicide precaution, inmates are only allowed to wear a safety gown, which resembles a hospital gown made with heavy fabric. According to Sheriff Safety Cell Policy (2104.3), Correctional Health Services staff may withhold the mattress and/or safety gown if deemed a hazard, which renders the inmate naked on a lightly padded floor. No personal items are allowed inside the safety cell. Several staff stated that it is cold inside the cell. When the Grand jury inquired as to how an inmate stays warm, one staff member suggested the inmate roll into a ball. Other staff had no answer at all.

The National Sheriff's Association and the Treatment Advocacy Center published a joint report in April, 2014, titled, *The Treatment of Persons in Prisons and Jails: A State Survey*. One of their significant findings was that mentally ill prisoners are much more likely to spend time in solitary confinement than other prisoners. According to the report, "The effect of solitary confinement on mentally ill prisoners is almost always adverse. The lack of stimulation and human contact tends to make psychotic symptoms worse" (Treatment, 2014). A briefing paper developed by The California Corrections Standards Authority (CSA) echoed this concern, stating, "Mental Health professionals contend that it is often counter-therapeutic to house a mentally ill person in a safety cell; being segregated instead of getting the interpersonal crisis intervention by a trained mental health professional that they need is likely to exacerbate their illness" (California 2015).

In their investigation of the Orange County Jails in March 2014, the Department of Justice stated, "We have warned for some time that some of the suicide [safety] cells do not sufficiently

mitigate the risks for suicidal prisoners. Indeed, at least one successful suicide and a number of serious attempts have occurred in the most problematic housing areas cited in this letter.”

At the request of the Grand Jury, Correctional Health Services staff provided data for safety cell admissions from January through October 2015. The total number of admissions per month varied from 3-9, with a total of 77 admits. The number of days an inmate spent in the safety cell varied from 1-5 days. The Grand Jury was told that on rare occasions an inmate has stayed in the safety cell several days due to disruptiveness, however, statistics over a ten month period demonstrate that approximately 40% of inmates stay in the safety cell for more than one day (30% stay for two days and approximately 10% for 3 days or more). A Correctional Health Services clinician told the Grand Jury that inmates are often forcibly medicated prior to being taken to a safety cell and usually fall asleep.

Correctional Health Services and Sheriff's staff rotates observation checks every 15 minutes for as long as the person is in the cell. Staff observations are documented in a log that includes a section for staff remarks and/or observations. A redacted sample reviewed by the Grand Jury had mostly single word comments, such as “sleeping,” “resting,” “quiet.” None of the comments indicated that the inmate was disruptive, trying to hurt himself, or was otherwise non-compliant, including his behavior at the time of entry. The inmate was placed in the safety cell at 1:30 PM and exited at 8:00 AM the next morning, for a total of 18 ½ hours in the safety cell.

According to the Correctional Health Services Safety Cell Policy (8609), “Any CHS clinical staff member can recommend safety cell placement for an inmate who has committed an act that is the result of a mental disorder and is significantly dangerous to the inmate or another person.” The policy does not define the type of acts, how staff determines that the behavior is specifically tied to a person's mental disorder, or what constitutes a significantly dangerous act, which places the burden upon individual clinical staff to make recommendations based on their own experience and judgment. The Safety Cell Admission Form, which is initiated by Correctional Health Services staff, includes a section that requests a description in “measurable and observable terms” of the behavior warranting admission to the safety cell. One check and balance to this procedure is that a psychiatrist must provide a written order prior to safety cell placement, unless there is no psychiatrist on duty, in which case a qualified mental health professional may order temporary placement, with follow-up verification by the psychiatrist later, usually by phone. The policy does not define which staff are qualified mental health professionals.

The Correctional Health Services Safety Cell Policy (8609) also states that inmates in safety cells are evaluated at least once every two hours by nursing staff to “offer fluids, observe overall medical condition, and *evaluate whether continued retention in the safety cell is indicated* [italics added for emphasis]” The criteria for removal from a safety cell are vague – “A CHS clinical

staff member may assess whether the inmate has regained sufficient control to be removed from the safety cell. This assessment will be reviewed with the CHS psychiatrist who will make the final decision for removal.” The policy does not define which classes of clinical staff members are competent to complete the assessment, but more importantly, it does not define” significant control.” Again, this places the burden upon individual clinicians to define the level of control the person has gained based on their own experience and judgment. Some Correctional Health Services staff stated they are hesitant to awaken a sleeping individual to move him back to his cell as inmates have rights regarding uninterrupted sleep. However, if the inmate awakens, staff could move him back to his cell any time, except for the fact there is no psychiatrist there to authorize the move.

The Grand Jury provided the following scenario to several clinical staff members, asking if this sequence of events would be accurate:

The psychiatrist on duty writes an order and an inmate is transferred to a safety cell at 3:00 PM. The psychiatrist goes home for the day at 5:00 PM. At 7:00 PM the inmate shows no signs of agitation, tells Correctional Health Services staff he has no intention of doing further harm to himself or others, and would like to go back to his regular cell. Fifteen minute observations documented by Sheriff and Correctional Health Services staff indicate that he is calm and compliant. Can he be released back to his cell at that time?

The answer provided by staff members was ambiguous. While some staff agreed that the inmate meets the established criteria for release, some also stated the inmate must be evaluated by the psychiatrist prior to release. If the psychiatrist has gone home for the day, the inmate will be evaluated and released the next morning, upon the psychiatrist’s visual assessment. When asked if the psychiatrist could be called at home and assured by a clinical staff member that the inmate was assessed to have “gained significant control,” could the psychiatrist authorize release, again the answer was ambiguous. The psychiatrist could authorize release, but many staff are hesitant to call the psychiatrist at home for this purpose. Contradictorily, most staff will call the psychiatrist at home to obtain the order to place an inmate in the safety cell. According to the Judge David L. Bazelon Center for Mental Health Law, an inmate “should be released from seclusion or restraint as soon as the immediate physical danger is diminished....” (Judge, 2016)

California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections Section (§1055), which defines the parameters of safety cell retention, states:

An inmate shall be placed in a safety cell only with the approval of the facility manager, the facility watch commander, or the designated physician; continued retention shall be reviewed a minimum of every eight hours. A medical

assessment shall be completed within a maximum of 12 hours of placement in the safety cell or at the next daily sick call, whichever is earliest. The inmate shall be medically cleared for continued retention every 24 hours thereafter. A mental health opinion on placement and retention shall be secured within 24 hours of placement.

Orange County Correctional Health Services has designated that only a psychiatrist may authorize safety cell release. Nurse practitioners, who regularly substitute for psychiatrists in other parts of the jail, are on duty daily until midnight and could perform this function. However, a spokesperson for the Health Care Agency indicated that suicidal ideation is a significant consideration when determining if it is safe for someone to be released back to their regular cell and that psychiatrists are best suited to determine exit criteria for this reason. In all other parts of the jail system Nurse practitioners regularly evaluate inmates for suicide risk.

As a therapeutic intervention, placement in a safety cell must be viewed as a treatment failure. Staff was unable to successfully intervene at a lower level of agitation or distress to prevent escalation to the point a safety cell was the only viable option. The Judge David L. Bazelon Center for Mental Health Law asserts, "Seclusion and restraint are safety measures. Their use, particularly when it is recurrent or protracted – represents a treatment failure and should be addressed at such. Seclusion and restraints can lead to death, serious physical injury, and trauma. People subject to seclusion and restraint experience it as frightening, humiliating, and dehumanizing." (Judge, 2016)

The Grand Jury reviewed the Crisis Stabilization Unit Policy, Restraints and Seclusion (7490). During an interview with a top official, the Grand Jury was told that seclusion is not used and there was no designated seclusion cell on Mod L, yet the Grand Jury was provided a segregation cell policy as part of the current Crisis Stabilization Unit's Policy Manual. When asked how a seclusion cell differs from a safety cell, staff stated there is basically no difference in the level of isolation or its function. According to the Restraint and Seclusion policy, locked seclusion is a physically imposed condition that limits an inmate's freedom of movement. It is used as a means for keeping an inmate from harming himself or others, which is the same purpose identified for safety cell use. Additionally, the Restraint and Seclusion policy indicates that seclusion can be ordered by a psychiatrist for four hours, with an order for one additional four hour period as needed, compared to a safety cell, which has no defined maximum.

One major difference between a seclusion cell and a safety cell is that a debriefing meeting is held for use of restraints and seclusion, however, no debriefing meeting is required after placement in a safety cell. According to the Judge David L Bazelon Center for Mental Health Law, the inmate "should participate in a post-event debriefing with professional staff to better understand what occurred and how to prevent recurrence." (Judge, 2016)

The Restraints and Seclusion policy includes a debriefing meeting, held within 24 hours of an event, for the purpose of:

1. Assisting the inmate to identify the precipitant of the event, and suggest methods of more safely and constructively responding to the incident;
2. Assist the staff to understand the precipitants to the incident, and to develop alternative methods of helping the inmate avoid or cope with those incidents;
3. Help treatment team staff devise treatment interventions to address the root cause of the incident and its consequences, and to modify the treatment plan;
4. Help assess whether the intervention was necessary and whether it was implemented in a manner consistent with staff training and facility policies;
5. Provide both the inmate and staff the opportunity to discuss the circumstances resulting in the use of seclusion or behavior restraints, and strategies to be used by staff, the inmate or others that could prevent the future use of seclusion or behavior restraints.

Since there is functionally no difference between seclusion and safety cells, the Grand Jury concludes that a debriefing should be held for each safety cell use. The debriefing process turns a treatment failure into a treatment opportunity, especially when suicidal ideation or attempts are a concern.

Clinical Services

Psychiatrists

The Orange County Jail currently employs three fulltime and two part-time psychiatrists for the entire Orange County inmate population. An additional psychiatrist is currently in the hiring process. On any given weekday there can be as many as four psychiatrists on duty during the day. Occasionally they provide weekend coverage and are available by phone as needed. They are responsible for the care and treatment of all inmates in Mod L and some outpatient psychiatric clinic coverage within the Intake and Release Center.

Psychiatrists prescribe medication to inmates but do not initiate psychotherapy. The use of voluntary or involuntary medication (both emergency and non-emergency) may assist with the stabilization of an inmate so that therapeutic interventions can be introduced. According to a study titled, *An Alternative Approach: Treating the Incompetent to Stand Trial*, “The court specifically held that the provision of medications alone to mentally ill defendants did not legally constitute the kind of treatment efforts that are required to restore someone to mental competency.”

Psychiatrists transfer care of a patient to a nurse practitioner when the patient leaves Mod L. This practice may disrupt continuity of care for inmates who are then housed in the general population and have a mental health diagnosis. The jail currently employs only three nurse practitioners for

all but approximately 120 inmates with mental health issues who are assigned to Mod L. In total, only eight medical staff (physicians and nurse practitioners) are responsible for the 1,200 or so inmates with mental health issues.

Psychiatrists provide direction for the daily medical care of Mod L patients. They evaluate inmates new to the unit, assess the need for conservatorship, participate in weekly interdisciplinary team meetings, and prescribe medication. They also constantly assess and reassess inmates to determine their need to stay in Mod L or their ability to transfer to the general population. They do not conduct therapy with the inmates nor do they oversee or provide guidance in the group therapy programs instituted by case managers and nursing staff. Some of the psychiatrists are bilingual, but none are proficient in Spanish, a predominant language spoken by inmates in the jail system.

On June 6, 2015, the Orange County Register published an article entitled “County Answers Plea for More Mental Health Care,” in which an Orange County Jail psychiatrist spoke to the disparity in staffing ratios between Los Angeles and Orange Counties. Los Angeles employs 35-40 psychiatrists for approximately 15,000 inmates compared to Orange County, which at the time the article was written, employed three psychiatrists for 6,000 inmates. This equates to a psychiatric caseload of approximately 400 in Los Angeles, compared to a psychiatric caseload of approximately 2,000 in Orange County. Although the psychiatric staff number has improved slightly since the article was published, the ratio remains vastly out of balance. A Correctional Health Services employee stated it is difficult to recruit psychiatrists to work at the Orange County Jail because they can make significantly more money if they work in one of the neighboring counties. According to the County of Orange Human Resources Current Salary Schedule, psychiatrists make \$16,707 - \$19,356 monthly (Human 2016). One Correctional Health Services staff member said the salary in a neighboring county is substantially higher, even as much \$50,000 - 100,000 annually. The Grand Jury was informed that the Board of Supervisors has recently authorized a pay increase for psychiatrists, which will make working for the Orange County Jail more competitive for future candidates. A spokesperson for the Health Care Agency has expressed a desire for additional psychiatrists but due to salary restrictions, there is a general lack of interest to work for Orange County in this capacity.

Case Management

Case manager is a broad term for a variety of disciplines, including Marriage Family Therapists (MFT), Licensed Clinical Social Workers (LCSW), Psychologist, and Licensed Psychiatric Technicians (LPT). Although each discipline has varying levels of education and experience and is paid according to their classification, the basic functions are the same, with a few exceptions. Mod L case managers are generally Licensed Psychiatric Technicians. Although Mod L is the section of the jail that houses the highest number of acutely mentally ill inmates, Licensed

Psychiatric Technicians, who have a lower level of education than Marriage Family Therapists or psychologists, facilitate the majority of therapy groups on Mod L.

Case managers are clinicians employed through Correctional Health Services. There are eleven case managers for the approximately 1,200 inmates with mental health diagnoses. Two are assigned fulltime to Mod L to provide therapeutic services to inmates with acute psychiatric issues, and others have a partial Mod L caseload. Other case managers are assigned caseloads that include inmates with mental health issues that are housed in the general population. Their tasks include assessing their clients for mental health issues, including history, presentation, jail housing needs and psychiatric medication needs. They also discuss inmate progress with other team members at weekly treatment team meetings if the case is complicated or if the person is one of the ten inmates housed on the Crisis Stabilization Unit. One of their primary focuses is discharge planning, which connects their client with community and/or court services, in order to provide continuity of care after release.

Case managers on Mod L carry a caseload of 30-35. In the general jail population, case managers handle a caseload between 50-100 inmates. Case managers on Mod L interact with the acute inmates at least one time weekly. When someone in their caseload is moved to general housing in another part of the jail system they hand the case over to a different case manager who will see their new client within three days of transfer. Inmates sometimes come and go so quickly they never see a case manager, either in Mod L or the general housing area.

Case managers who are assigned inmates in general housing units are required to see their clients every 30-60 days after making initial contact with an inmate. They evaluate how the inmate is getting along with other inmates, whether or not he is feeling suicidal, if he is hearing voices and if he is taking his medication as prescribed. If the case manager determines an inmate is psychologically fragile, visits are more frequent. Additionally, the inmate can complete a request form to see the case manager in the clinic. If the inmate refuses to take medication and is stable, the case manager will most likely close the case, however, according to the Department of Justice, in a Joint Settlement Agreement Regarding the Los Angeles Jails, prisoners in High Observation and Moderate Observation Housing, and those with a serious mental illness who reside in other housing areas of the jails, will remain on an active mental health caseload and receive clinically appropriate mental health treatment, regardless of whether they refuse medication.” (United, 2015)

If an inmate who has been transferred from Mod L to general population housing cannot cope, he will go back to Mod L. If Mod L is full, he will go to the triage area in the Intake and Release Center until deputies can secure a bed on Mod L. The Grand Jury was told that there are not enough resources for the mentally ill in jail but they do the best they can.

Case managers try to ensure continuity of care by making appointments for inmates upon release. Orange County has a wealth of community resources available to individuals seeking therapeutic help but according to staff interviewed, resources are not always easy to access. The case manager will make an appointment with the mental health clinic within 24 hours of discharge so the client can continue their medication but many do not follow through and keep their appointments. Discharge plans are tracked in terms of referrals to community services to see which services former inmates are utilizing the most. This information is then provided to Correctional Health Services management along with other monthly statistics regarding inmate release.

Inmate Education and Therapeutic Services

Mentally ill inmates who reside in the general jail population do not receive any counseling or education specific to treatment of their mental illness. The Sheriff's Department provides programs and classes available to the general jail population that would be of great benefit to those with mental health issues, but mentally ill inmates often do not qualify for the programs and there is often no room to accommodate them.

Inmate Services: Correctional Programs

The Orange County Sheriff's Inmate Services Division includes Correctional Programs. Approximately 400 volunteers and 28 paid staff help with tasks mandated by the California Penal Code to ensure the inmate is connected to the outside world. The paid staff of 28 includes Correctional Program Technicians (CPT), Educational Services Coordinators (ESC), Supervisors and Managers. CPTs, also referred to as coaches, are trained by the National Institute of Corrections and need to qualify in order to run inmate training programs such as "Thinking for a Change," the use of motivational interview techniques, and Cognitive Behavioral Therapy.

Classes consist of basic educational programs (including GED), vocational programs (workforce readiness), behavior modification, substance abuse, and life skills (anger management). Staff stated it is difficult to implement effective interventions due to the daily flux of the jail population. There are no classes designed specifically, either within the Department of Inmate Services or Correctional Health Services, to address the needs of mentally ill inmates. Since many mentally ill inmates also have co-occurring substance abuse disorders, they do benefit from substance abuse meetings, such as Alcoholic and/or Narcotics Anonymous, which are held in the jail.

According to Sheriff's Department staff, the best approach for providing effective intervention is to connect the individual to services after release through social services, health care, probation and the courts. The Orange County Community Correction Partnership (CCP), headed by the

Probation Chief, meets quarterly to discuss long-term solutions and post-custody resources. This group includes the Sheriff, District Attorney, Health Care Agency, Social Services, and the Public Defender.

Trying to meet the needs of the entire jail population is a daunting task. Currently, the funding for the Inmate Services Division comes from two sources – the inmate commissary and inmate telephone charges. The revenue combines to constitute the Inmate Welfare Fund. As of June 2016, the rate jails can charge for inmate phone usage will be drastically reduced due to an FCC mandate, resulting in approximately \$4.3 million in lost revenue annually. It will be incumbent upon the County to find a new source of funding when this revenue source is gone.

Lack of classroom space is another issue that makes providing inmate services very difficult. In one of the men's jail there are three classrooms for 2,500 inmates and in another jail there is only one classroom, so it is not surprising that there is a waitlist for classes. In order to fully address education needs and possible rehabilitation, the Sheriff's Department and the Health Care Agency need to think outside the box to find a solution to this problem. Currently, due to the implementation of Proposition 47 primarily, the jail population is down, which leaves room to potentially repurpose some areas for other uses.

One improvement that will enhance treatment services in the future is the expansion of the Musick jail facility. The Sheriff's Department has received a total of \$180 million in grant money for future development of this facility. The tentative completion date is 2019. The staff at the new facility will focus on inmate training and rehabilitation, which will include greatly increasing space for classroom instruction (County, 2015). Staff interviewed stated services for the most critically mentally ill inmates will remain at the Intake and Release Center due to the need to stabilize newly processed inmates. Additionally, the concentration of most medical and clinical services will still be located at the Intake and Release Center, although Correctional Health Services has budgeted for mental health staff, including a psychiatrist, for the Musick expansion.

Therapeutic Treatment on Mod L

The primary mode of therapeutic activity for male mentally ill offenders in the entire Orange County Jail system is contained in one small section of Mod L. This small concentration of therapeutic intervention does not appear to be adequate to meet the needs of the mentally ill jail population. The Grand Jury was told by some staff that jail is not a therapeutic environment. One County employee who works closely with mentally ill inmates echoed this sentiment by indicating not only is Mod L non-therapeutic, the conditions are offensive.

Correctional Health Services facilitates four group therapy sessions daily for the Mod L inmate population. Although there are 10 beds in the Crisis Stabilization Unit, groups average 2-8 participants. All groups are conducted in an open space in Mod L, with staff and inmates coming and going. Some staff stated that the other approximately 110 inmates in Mod L could benefit from participating in the group therapy sessions, but there is no mechanism in place that makes this possible.

The nursing staff facilitates a morning group that focuses on activities of daily living and medication compliance. According to a Behavioral Health Services staff member, the purpose of group is to encourage the performance of self-care activities such as showering, shaving, brushing teeth, and keeping their space clean.

Correctional Health Services case managers facilitate the remaining three daily therapy groups. The purpose of the case management facilitated groups is to assist the inmates in gaining insight, raising consciousness, and preventing recidivism, but the Grand Jury was not provided any data demonstrating that therapeutic groups accomplished these goals. A Correctional Health Services employee told the Grand Jury that therapy sessions focus on a wide variety of topics, including emotional regulation, cognitive behavioral techniques, social skills training, relaxation techniques, safety, and the importance of boundaries. Although group therapy is the only therapeutic treatment on the Crisis Stabilization Unit, some of the case managers who facilitate these groups were unable to articulate a list of topics covered and could not adequately explain the therapeutic outcomes they hoped to achieve in their groups. Some group facilitators described activities such as watching movies and coloring. Some also said sometimes inmates just talk about what is on their mind.

The Grand Jury inquired into the methodology for facilitating groups and it appears there is no coordinated system. Some staff interviewed stated that they do not receive training specific to facilitating a therapy group for mentally ill inmates; they get group ideas from other case managers. Although senior staff provided the Grand Jury with a daily calendar of general therapy topics, many staff that facilitate the groups did not appear to use it. There is no structured curriculum defining what content should be included under a specific topic, or the purpose/outcome to be achieved.

Some mental health providers told the Grand Jury their main objective is to keep the inmate safe. Therefore, they try not to start in-depth conversations they cannot finish due to a variety of factors such as lack of privacy, potentially limited time in jail, and safety concerns. Some mental health professionals told the Grand Jury that if they could make changes they would hire more staff for groups, have fewer Mod L inmate restrictions, initiate more activities, and schedule more time out of cells.

The Grand Jury reviewed the *Thinking for a Change* curriculum as a possible therapeutic intervention in the men's jail and found it potentially beneficial. *Thinking for a Change* is a cognitive-behavioral curriculum developed by the National Institute of Corrections that concentrates on changing the criminogenic thinking of offenders. *Thinking for a Change* stresses interpersonal communication skills development and confronts thought patterns that can lead to problematic behaviors (Crime, 2106). According to Correctional Health Services staff, they have submitted an application to the National Institute of Corrections for on-site training.

The Health Care Agency should consider implementing *Thinking for a Change*, or a similar program, both in Mod L and particularly in the general population where therapeutic interventions for the diagnosed mentally ill are woefully lacking. Expanding the program will necessitate augmenting the number of facilitators and also finding a space to hold classes. The Health Care Agency uses a fairly private corner of Mod L to hold group therapy sessions for Crisis Stabilization Unit inmates. Due to the shortage of space everywhere, other creative solutions will have to be evaluated for the general population.

Staff Training

There are two separate entities that need specialized training when interacting with mentally ill inmates in the jails: Sheriff's deputies and Correctional Health Services staff.

Sheriff's Deputies

Sheriff's deputies begin their formal training in mental health in the Sheriff's Academy using courses certified by the California Commission on Peace Officer Standards and Training (POST) and the Correctional Standards Authority (CSA). POST basic academy training offers courses that assist deputies in dealing with people who have special needs. The overview to Chapter Four, which addresses mental illness, states, "Peace Officers must become familiar with the behavioral and psychological indicators of mental illness in order to determine if an individual is a danger to others, danger to self or gravely disabled and to determine an appropriate response and resolution option." (California, POST)

In addition to this training, the POST requirement also includes Advanced Officer Training, which consists of twenty-four hours of training every two years in compliance with the POST requirements. Advanced Officer Training offers a variety of courses but currently does not specify the number of hours for, or frequency of, on-going training for dealing with citizens with mental illness inside or outside the jail.

The Sheriff's policy for dealing with mentally ill persons is in the Field Operations Manual, Section 29. The policy discusses symptoms of mental illness and physical conditions that look like mental illness. It also discusses how to talk to a disturbed person.

The Grand Jury was told in an interview that deputies are the eyes and ears of Correctional Health Services. They need to be aware of overt and subtle changes in behavior. As such, members of Orange County Correctional Health Services provide ongoing training for deputies who are assigned to the jails. Correctional Health Services offers suicide/risk prevention training to deputies quarterly. Correctional Health Services case managers provide two hour training to Mod L deputies twice a year, as well as training in use of safety cells. Senior Correctional Health Services staff told the Grand Jury they have ongoing talks with deputies regarding inmate mental health issues. Deputies do a good job communicating their concerns about inmates to medical staff and medical health staff and there is close collaboration between deputies and Correctional Health Services staff. Several members of Correctional Health Services told the Grand Jury that deputies assigned to Mod L are selected carefully, as not all work well with this population. The Sheriff's Department tries to assign deputies to Mod L based on their desire to be there and their temperament. They need to be sensitive to those with a mental health diagnosis and understand the most effective ways to communicate with them.

Because of the large numbers of inmates suffering from various levels of mental illness, the Grand Jury believes all deputies should be well trained in both the recognition of mental illness and signs of decompensation, and in techniques proven to deescalate situations and calm those inmates in distress. When interviewed, some deputy sheriffs expressed both a desire and a need for on-going, in-depth training in this area of policing.

Correctional Health Services

Correctional Health Services provides the other major component to mental health care in the jails. This healthcare department is made up of psychiatrists, psychologists, registered nurses, and various levels of mental health practitioners, some of whom function as case managers. All receive their professional training at various universities and colleges before they are hired to work in Orange County jails.

Those doing the hiring look for people with the right attitude towards mental illness when they are interviewing to fill a position. New staff receives on-the-job training. All new nurses are paired with a seasoned nurse and stay in their first rotation for 4-5 months before moving on to complete a rotation through various sections of the jails. It takes about a year-and-a-half to complete the rotation. Nurses are not trained specifically to conduct therapy groups with Mod L inmates.

The Mentally Ill and the Law

There are laws and statutes that regulate the lives of those who are incarcerated. When an individual is mentally ill, the legal system is particularly complicated. Some factors that may impact a mentally ill individual include the use of forced medication and delayed trial proceedings due to incompetency to understand the charges and/or assist the defense attorney in his own defense. Those representing mentally ill individuals are obligated to protect the person's best interest and constitutional rights. The Grand Jury examined some of these laws and discussed them at length with the Public Defender's Office, the District Attorney's Office, and other representatives of the court.

It is the responsibility of a defense attorney or public defender to zealously represent an individual who is arrested and facing trial and a potential jail sentence. To this end, they look at all the elements of the crime with which their client is charged, including possible mental health issues. They may request a psychiatric evaluation of their client in order to make a determination as to whether the client is able to assist in his own defense.

Penal Code §1368: Incompetent to Stand Trial

Under California State and Federal law, all individuals who face criminal charges must be mentally competent to help in their defense: [*The Constitution of the United States*, Amendment 5., *Dusky v United States*: 362 U.S. 402 (1960), *Jackson v Indiana*: 406 U.S. 715 (1972), *Freddy Mille v Los Angeles County* (2010)]. By definition, an individual who is incompetent to stand trial (IST) lacks the mental competency required to participate in legal proceedings. While a person may be IST due to mental illness, or other reasons such as a developmental disability, this study focuses on the former.

The 1960 U.S. Supreme Court decision *Dusky v United States* found that the defendant must have "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding of the proceedings against him" (Dusky, 1960). Being competent means the defendant must both understand the charges brought against him and have sufficient mental ability to help his attorney with his defense. The 1972 U. S. Supreme Court decision *Jackson v Indiana* found the state violated a criminal defendant's constitutional right to due process by involuntarily committing an individual for an indefinite period of time because of his incompetency to stand trial. The U.S. Constitution, as well as the California State Constitution, states no person shall be deprived of life, liberty, or property without due process of the law.

Under state law, when a defendant's mental competency to stand trial is in question, the courts must follow a specific competency determination process before the defendant can be brought to trial. Figure 2 below summarizes this process (Legislative, 2012).

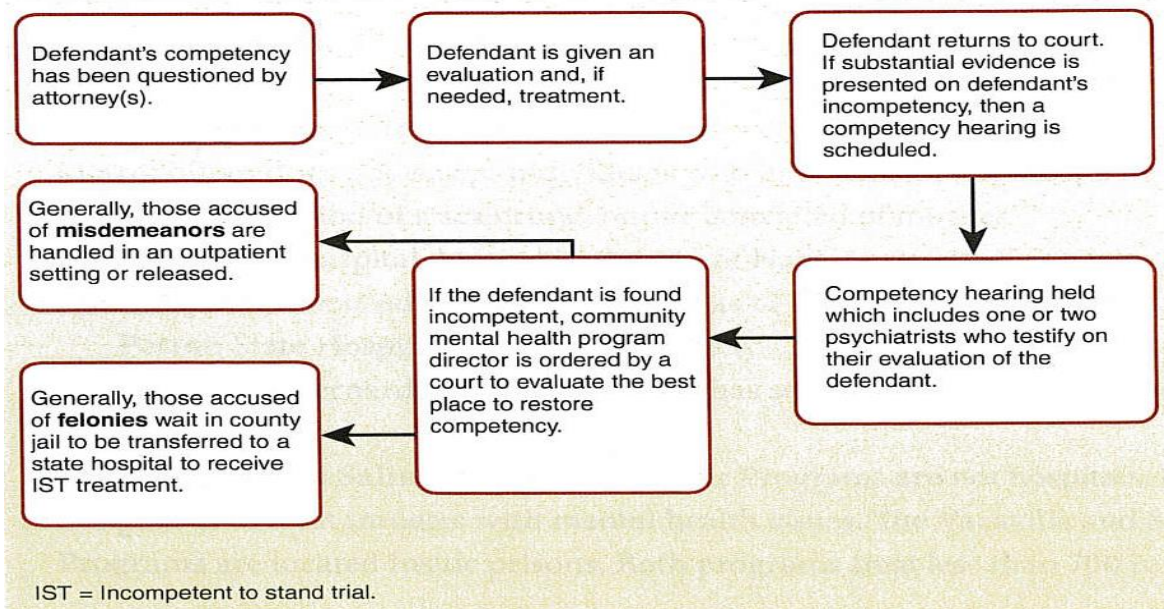


Figure 2: Determination of Mental Competency Process

It is typically the responsibility of the defense attorney to declare doubt that the client can assist in his defense, however, the court also can observe and make a determination on mental capacity. If the defendant is being tried on a misdemeanor, this entire process can create a dilemma for the defense because being declared IST and the ensuing restoration to competency (ROC) could potentially take much longer than the sentence the client would serve had he gone to trial and been found guilty. The potential outcome is that the defendant will be incarcerated much longer than necessary. The best outcome for a misdemeanant if the charges are not dropped is to undergo an assessment and receive a referral from the Conditional Release Program to receive services. If the charges are dropped, the public defender will initiate a support process that same day to get their client help.

In both felony and misdemeanor cases the Court assesses the mental health evaluations. The individual has a right to a trial on the issue of competency but usually the court makes the determination. If the Judge declares the person incompetent to stand trial (IST), a §1370 is filed, and the process moves forward to have the individual restored to competency in a state hospital if being held on a felony charge, or referred to an outpatient program if the charge is a misdemeanor.

The Crisis Stabilization Unit in the jail is not designed and staffed to restore competency to those who have been declared incompetent to stand trial by the court. Until recently, the only avenue was admission to a state hospital that has a restoration program. The Grand Jury learned the Public Defender's Office is filing more Habeas petitions, which the court is granting in an effort

to expedite treatment for restoration of competency and admit those individuals to a ROC program. The Grand Jury heard that, when the state hospital learns a petition for Habeas Corpus has been filed with the court, a bed in the state hospital opens up the day before the scheduled hearing.

Healthcare professionals in and outside the County of Orange told the Grand Jury the individual sometimes returns from a state hospital too soon and is so overly medicated (but compliant) he is still not able to assist in his own defense. The Grand Jury was told that in some cases inmates are drugged instead of counseled and only rarely given one-on-one therapy. Upon returning to jail, the inmate may refuse to take his medication, thus running the risk of decompensating before the trial date. If that happens, the process begins again.

There may now be an alternative to the Orange County court sending an inmate to a state hospital for restoration of competency in the form of a program initially established in 2011 by the San Bernardino Sheriff's Department (SBSD). This alternative is a jail-based program that also works to restore competency. Besides saving money, it saves time – a critical factor when an individual is incarcerated. According to San Bernardino statistics, in 2009-2010, the average length of stay in jail for pre-sentenced IST inmates was 765 days. In 2009-2010, the average length of stay in jail for pre-sentenced **non**-IST inmates was 42 days (Fillman, 2014). The huge discrepancy in time has to do with the current state hospital process of restoring an individual to competency.

The wait time for Orange County IST inmates is generally between 60-120 days. In the meantime, the inmate's general needs are being met in jail but there is no attempt to restore competency. In *Freddie Mille v Los Angeles County* (2010) the Second District Court of Appeal held that the common practice of providing medication alone to mentally ill defendants in jail “did not legally constitute the kind of treatment efforts that are required to restore someone to mental competency” (IN, 2010). Thus the transfer of an inmate to a treatment facility in a timely manner is legally required and the courts recommend that it be completed in no more than 30-35 days. See Appendix B for the court's discussion and decision on the *Freddie Mille* case and Habeas Corpus which has a bearing on Habeas petitions in Orange County. While the courts have recommended IST commitments be transferred to a state hospital within 35 days, lack of physical space combined with staffing issues and the time needed for treatment makes this recommendation impossible.

The jail-based program in San Bernardino, which began as a California Department of State Hospital Pilot program and was so successful the San Bernardino Sheriff's Department (SBSD) expanded it, as of this writing has 54 of 96 authorized beds filled. It is currently accepting inmates from San Diego and Los Angeles Counties. This is an award-winning program whose

objective is a fast track to “restoration of competency” and thus, it is commonly referred to as the ROC program (Fillman, 2014). It is a less costly alternative to state hospital admission and helps reduce the state hospital waitlist. It also enables patients to receive more timely treatment. A private healthcare contractor, which runs the program, takes responsibility for all paperwork and sees that it is completed correctly. The Department of State Hospitals carries the financial burden and SBPD is responsible for all inmates once they are admitted to the program. The private contractor puts all the pieces together, including positive reinforcement, encouraging participation and compliance with the program. Psychiatrists see patients daily and there is an increased amount of programming for inmates. San Bernardino referred to the private contractor as an innovative and fantastic partner.

Statistics as of October 2013 show the average length of treatment for restoring defendants to competency in the San Bernardino program was 14-150 days. Eighty-nine percent (89%) of defendants were restored to competency in less than 90 days. The court upheld competency findings 98% of the time. Ninety percent (90%) of defendants were prescribed psychotropic medication and, using a compliance incentive program, 87% were fully compliant. This program saved San Bernardino County Sheriff's Department more than 150,660 jail beds since its inception in 2011 (Fillman, 2014). San Bernardino officials say they have looked at this program from every angle and there is no downside. They view it as a “win-win.”

Although Orange County has small IST numbers (approximately 5-10 at any given time), even one person who remains in jail because there is no room in a state hospital puts the County at risk of a lawsuit pursuant to *Jackson v Indiana* and *Freddy Mille v Los Angeles County* discussed above. Also, defense attorneys, who must responsibly represent their client, are justifiably troubled at the length of time their client spends in jail with his case going nowhere. Under the state Determinate Sentencing Law, IST defendants are not permitted to stay in a state hospital longer than three years or the maximum prison term the court could have sentenced the defendant to serve if he was found guilty, whichever is shorter. This reality creates the aforementioned dilemma for defense attorneys who recognize that their client could be looking at spending more time in jail for being acutely mentally ill than a guilty verdict and subsequent sentence would have imposed upon him, had he been found guilty. What if he is found **not** guilty?

At the time of this writing, the Grand Jury understands that Correctional Health Services and the County of Orange now have contractual agreements in place with the San Bernardino Sheriff's Department ROC program to place Orange County inmates declared incompetent to stand trial in the San Bernardino program. It is likely inmates needing admittance to a state hospital will be going to the San Bernardino program as early as June 2016. The Grand Jury appreciates the efforts of Orange County executive administrators who have worked to find a solution to restore competency in a timely manner for those inmates declared IST.

Lanterman-Petris-Short Act (1972): California Welfare and Institution Code 5150: Riese Hearings

The Lanterman-Petris-Short (LPS) Act concerns the involuntary civil commitment of an individual to a mental health institution in the State of California. Pursuant to the California Welfare and Institutions Code, it is commonly referred to as a §5150 hold. Other holds under this Code section include: a §5250: 14 day extended hold; and a §5270: 30 day extended hold. Individuals on a §5250 or a §5270 have a right to counsel and their attorney can file a Writ of Habeas Corpus, which would result in the court having to justify the individual's continued detention.

It is not against the law to be mentally ill. If inmates can take care of their basic needs and manage life adequately, they are not considered gravely disabled. If a mentally ill inmate refuses to take medication and is not in danger of harming himself or others, no treatment is forced on him.

However, if an inmate is not coping well in jail, decompensating and refusing medication, he may be placed on a §5150 hold. At that point he is becoming a danger to himself and/or others. It is then necessary to either convince him that it is in his best interests to take medication, or petition the Court in the form of a Riese Petition, also called a medication capacity hearing, to forcibly medicate him.

The inmate must be informed orally of the nature of the mental illness that is the reason for medication; the likelihood of improving or not improving without medication; any reasonable alternative treatments that are available; the name, type, frequency and method of administration of the proposed medication and the length of time it will be administered. Patients who are hostile or mute are to be provided with a medication booklet. The doctor must verbally or physically offer the medication and, if it is refused, the act constitutes the refusal. If the Riese Petition is granted, the inmate is medicated against his will. Medical staff told the Grand Jury they estimate they average two to four Riese Petitions per month.

There can be a conflict between the statute that the Court uses to declare an individual incompetent to stand trial (California Penal Code §1368) and the statute that allows for an individual to be medicated against his will, if he is a danger to self and/or others (Welfare and Institutions Code §5150). If an inmate is going through the legal process of being declared incompetent to stand trial and begins to decompensate, if Correctional Health Services initiates a Riese Hearing and the petition is granted, or if the inmate becomes mentally "stable" as a result of medication, it may affect the competency petition.

The Grand Jury was told a doctor recommending a Riese Hearing does not know the court status of the inmate and is objectively providing sound medical treatment to stabilize him. Medical staff said that they would not change their approach if they knew about the pending incompetent to stand trial hearing and occasionally staff does know, if there is a note in the inmate's chart. Correctional Health Services stated they would not initiate a Riese Hearing to interfere with a competency hearing as that would not be in the best interests of the inmate, but rather an attempt to manipulate the courts.

The defense attorney has a fiduciary obligation to represent the client and the choices he makes. In a Riese Hearing, that may mean advocating against forced medication. There is legal precedent for refusing medication (*Sell v United States*, 539 U.S. 166 [2003]) but it is doubtful an attorney would argue against the use of medication simply because it would restore their client's ability to assist in their own defense and nullify a competency petition.

Additionally, a Riese Hearing, and forced medication is only a short-term solution that must be revisited each time a §5250 or §5270 hold expires. The only potentially real solution is a holistic approach that involves treatment with the proper medication on a long-term basis, coupled with significant restoration therapy and family/community support. For an extended discussion of LPS, W&I §5150, and Riese Hearings, see Appendix B.

Assisted Outpatient Treatment (AOT): Laura's Law

The 2012-2013 Orange County Grand Jury published *To Protect and To Serve*, a study of the interaction between sworn officers and the mentally ill homeless. In an attempt to keep mentally ill individuals out of jail and to reduce recidivism, it recommended that the Orange County Board of Supervisors find a way to adopt and implement California AB1194, Laura's Law, also known as Assisted Outpatient Treatment (Orange, 2012-2013).

Laura's Law potentially gives mentally ill individuals who qualify for the program treatment and services necessary before they become dangerous or gravely disabled so they do not have to be involuntarily hospitalized, jailed, or suffer other consequences of untreated mental illness (California, 2012). Laura's Law allows persons suffering from mental illness to receive medical intervention on an outpatient basis.

In May 2014 the Board of Supervisors adopted Laura's Law. Orange County thus became the largest county in California to fully implement the law and a model for Laura's Law in the State. The Board recognized the unnecessary cost of repeated hospitalizations and incarceration is too great and, as former Orange County Supervisor and current State Senator John Moorlach pointed out: "We cannot allow our jails to be the predominant location for housing mentally ill people" (OC Register, 2014).

To qualify for admission to the Laura's Law program, a person must suffer from mental illness, be unlikely to survive safely in the community without supervision, and have a history of lack of compliance with treatment. They must also have a recent history of violence, incarceration or hospitalizations because of mental illness. Also, the individual must have required two psychiatric hospitalizations within the last 36 months or placement in a correctional facility due to mental illness, or the mental illness resulted in one or more attempts or threats of serious and violent behavior toward themselves or others within the last 48 months (California AB1194). The Orange County Health Care Agency works with eligible clients for approximately 60 days before applying Laura's Law.

A health care executive told the Grand Jury the program is very successful. Forty percent (40%) of referrals come through the jails. Assisted Outpatient Treatment personnel work with case managers in the jails to find services for inmates. They will meet with potential clients in the jail and, if the criteria is met, Assisted Outpatient Treatment can refer services. Assisted Outpatient Treatment staff will also pick up clients from jail upon their release and take them directly to whatever services they need. Referrals can also come through the Court. These referrals are for misdemeanants who are in need of an outpatient mental health services program to satisfy court orders for restoration of competency.

Behavioral Health Services has established a team of health care professionals who screen individuals deemed good candidates for Laura's Law and, if accepted, can enroll them in services. These professionals include clinical psychologists, clinical social workers, mental health specialists, licensed vocational nurses, registered nurses, marriage and family therapists and administrative and office specialists who direct, collect data and analyze the program to ensure quality.

According to Behavioral Health Services, in its first four months of implementation, (October 2014-January 2015), Laura's Law had nearly 500 inquiries, an average of four per day, but not a single person has been ordered into treatment against his or her will. There were 310 inquiries for information only and 169 treatment referrals. Nineteen individuals were already enrolled in a mental health program and 34 voluntarily entered treatment. One hundred forty-four (144) cases were resolved without a court hearing and 18 cases were referred to substance abuse/other community programs. There were 24 outstanding cases.

After 18 months (October 2014-January 2016), there were 1,060 inquiries for information only and 613 inquiries for treatment referrals. Sixty-one individuals were already enrolled in a mental health program and 166 voluntarily entered treatment. Behavioral Health Services closed 576 cases and were unable to locate 174 others. There are 55 open cases and three contested cases.

The Orange County Health Care Agency will continue to monitor the effectiveness of Laura's Law by collecting and analyzing data, with a view to evaluating the law's effectiveness with regard to reducing homelessness, incarceration, and hospitalization.

According to the Orange County Healthcare Agency and the AOT Administrator, Assisted Outpatient Treatment has turned out to be an access point for families to call when they do not know how to help their loved ones. "Two of the key ingredients of our success is having persistence and having patience. We have unconditional, positive regard for our members, no matter what they do. We welcome them in with open arms, no judgment" (Orange 2016).

The Mentally Ill and Community Therapeutic Programs

Orange County Collaborative Courts Program

"What happens is I start getting bad thoughts and I can't get them out of my head. I can't think about anything else.... I need help. I don't want to come in and out of prison my whole life. My history of violence has landed me in institutions but I feel like what is even worse than being locked up is that my behavior and my actions have gotten me alone. The alone feeling I have is brutal. I'm dying inside for help."

From the speech of a 2014 participant, requesting admission to the program.

Collaborative, or problem solving courts, are specialized court tracks that address underlying issues present in the lives of individuals who come before the court on criminal matters. Many times these underlying issues include some form of mental illness and co-occurring substance abuse issues.

There are four specific mental health courts as well as four community courts that address mental health issues. Figure 3 below, the Collaborative Court system, depicts their organization and the issues they address.

COLLABORATIVE COURTS

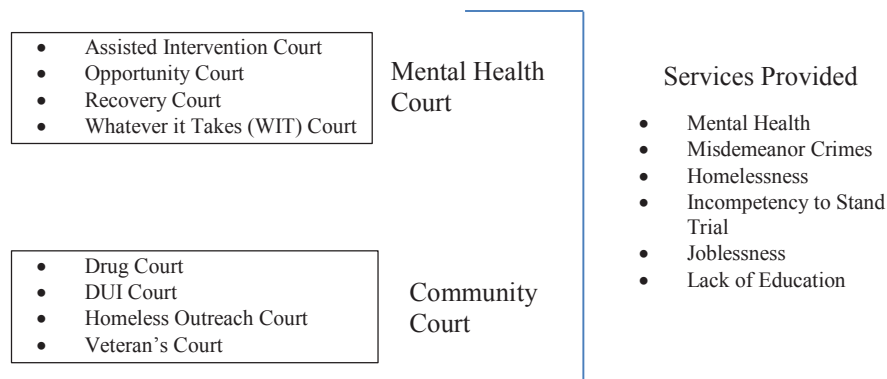


Figure 3: The Collaborative Court System

This collection of outreach court services has saved the County a significant amount of money, reduced recidivism, and thus jail beds, but most importantly – wasted lives. The Grand Jury believes these services have benefited the County and society at large and contributed to the quality standard of living many residents of Orange County enjoy.

Mental Health Courts use a collaborative approach that includes the resources of a judicial officer, the Offices of the Public Defender and the District Attorney (who follow the client, address legal issues and review progress), representatives from Mental Health Services (who provide all the evaluations for entrance into the various program), a private provider under County contract to provide treatment services, and the Probation Department. These programs are voluntary and are at least 18 months in length. They include substance abuse treatment, psychiatric services and counseling, assistance with housing, and other support services as needed. To qualify for Whatever It Takes (WIT) and Assisted Intervention (AI) court programs the individual must have a documented mental health diagnosis. The other mental health courts, Opportunity and Recovery, do not have the full complement of resources and partnership noted above. This is in part because their clients may not need all the services, or because County services, through the Health Care Agency, are not available due to financial restraints and classification restrictions. Eligibility criteria for other collaborative and community courts vary.

Similarly, representatives from the Court, the VA Healthcare System Long Beach, the California Department of Rehabilitation, Legal Aid Society of Orange County, and the Orange County Health Care Agency staff the Community Court. This collaboration ensures people can get proper assistance immediately. The Court offers a wide variety of supportive services for offenders who are homeless, addicted or mentally ill. There are also onsite supportive services available to walk-ins without an active criminal case. Please See Appendix C for a complete list of all collaborative courts and contact information.

All collaborative courts utilize evidence-based practices to achieve outstanding results, as noted in statistics in the 2015 Collaborative Courts Annual Report. This approach is key to obtaining reductions in recidivism, enhanced community safety, and in assisting participants to live productive and fulfilling lives. Those who graduate from one of the Collaborative Courts have an extremely low recidivism rate.

Of the 2,039 Drug Court graduates who have been out of the program for three years, only 28% were re-arrested within that time for any offense – far lower than the recidivism rate of 74% for comparable offenders who did not participate in Drug Court.

Of the 1,236 repeat-offense drunk drivers who have graduated from DUI Court, only 9.9% of those who have been out of the program for five years have had a subsequent DUI conviction

Our Brothers' Keeper: A Look at the Care and Treatment of Mentally Ill Inmates in Orange County Jails

within that time – far lower than the re-conviction rates of 21% and 25% for second and third time DUI offenders statewide.

Of the 258 mental health court graduates, all of whom had severe mental illness and substance addiction, only 34.9% have been re-arrested.

Of the 76 graduates of Veterans Treatment Court, only 8 have been re-arrested, for a recidivism rate of 10.5%.

Mental health court programs provide significant savings to the County because they reduce 911 calls, law enforcement contacts, arrests, hospitalizations, involuntary commitments, trials and incarcerations. In 2013, the County calculated the cost of a bed in jail at \$135.92 per day. In 2015, the mental health court programs saved 5,501 jail bed days prior to the application of custody credits, resulting in a cost savings of \$747,696. Since its inception, the mental health courts have saved more than \$8,755,500 in jail bed costs.

In 2014, the Department of Justice, Bureau of Justice Assistance, and the Center for Court Innovation designated the Orange County Community Court as a National Mentor Site, one of only four in the country. Other court jurisdictions visit Orange County Community Courts, observe team meetings and court sessions and learn best practices for establishing their own effective Community Court systems. As a national teaching site, the Orange County Community Court receives visits by court staff and justice partner personnel from state, federal and tribal agencies.

These courts are only as effective as the number of persons they can reach. The Grand Jury learned that there are individuals who, although they meet the majority of criteria for mental health court, are missing one small component of eligibility and thus cannot be admitted. There is also a gap between drug court and mental health making it impossible for some individuals to qualify for either court. There is also a need for the establishment of additional Collaborative Courts that meet the needs of the existing clientele because the established Collaborative Court qualifying enrollments are full.

Veteran's court functions under the auspices of the Veteran's Administration in Long Beach. Not all veterans are eligible for VA services. The County needs a veteran's court that is funded through County resources so that the vast numbers of Orange County veterans who are suffering distress from conditions such as Post Traumatic Stress Disorder (PTSD) can receive services. There is a need for Collaborative Courts that address the needs of this population. Proposition 63 is the 2004 voter-approved Mental Health Services Act (MHSA), which applied a 1% tax on Californians earning \$1 million or more. The County uses some of these monies to fund mental health programs throughout the County, including parts of Laura's Law. MHSA

monies also help fund WIT court. Funding a Collaborative Court expansion would be a prudent and effective use of MHSA money.

The California Forensic Conditional Release Program

Also known as CONREP, this program is a community outpatient mental health program designed specifically for persons with mental disorders and special conditions of treatment ordered as a result of Court or Board of Parole Hearings action. The State of California funds the program and each county contracts with the Department of State Hospitals.

The purpose of CONREP is to provide comprehensive community outpatient treatment and supervision to several different Penal Code classifications of individuals, including mentally disordered offenders (PC. §2962 or §2970). When an individual enters the CONREP program, he is required to sign a document that sets forth the terms and conditions of the program. Violating those terms and conditions is grounds for revocation of the agreement and admission to state hospital. Please see Appendix D for a discussion of the CONREP program.

Last year, Orange County CONREP had a total of 140 cases. There are currently 47 outpatient cases. These are usually the IST cases that are being charged with misdemeanor crimes and whose court cases will continue once the individuals are restored to competency. IST misdemeanants are usually housed somewhere in the community and therapists begin working with them immediately because their potential sentence will be no more than a year. The therapist develops a treatment plan based on the alleged crime. If the individual is not cooperative and will not take medication he is ordered by the court to a state hospital. If the individual is found by CONREP to be gravely mentally ill, it will initiate steps toward conservatorship.

Potentially violent felons, or those who are alleged to have committed violent crimes, are not candidates for this program.

Quality Assurance

The Grand Jury evaluated the systems in place for quality assurance and risk management activities as a means of addressing the ongoing issues with mental health care and treatment identified by the Department of Justice. Although the Health Care Agency/Correctional Health Services and Sheriff's Department work collaboratively through a Memorandum of Understanding, they have separate quality assurance activities and do not have an integrated approach for sharing data. They do have several standing meetings to discuss information that affects both entities. Examples of these meetings include Mortality Reviews and Critical Incident Reviews. Additionally, Correctional Health Services and the Sheriff's Department meet biweekly for Standard Operation Meetings to discuss a variety of topics and problem-solve

potential issues. Staff from Correctional Health Services and the Sheriff's Department also has a standing check-in meeting weekly at the Intake and Release Center.

Health Care Agency (HCA)/Correctional Health Services (CHS)

The main source of shared information within Correctional Health Services is via the Quality Management Committee (QMC), which meets quarterly. Committee members include managerial representatives from Pharmacy, Nursing, Dental, Medical, Mental Health, and Operations. Psychiatric staff is not represented on the committee, nor are Case Managers. The Mental Health Service Chief and Medical Director represent the mental health group. Routine reports are presented to the committee. None of the reports speaks directly to the Department of Justice concerns regarding the "limited array of mental health treatment and housing options that result in over-reliance on unsafe segregation cells and more restrictive interventions."

The Grand Jury reviewed a sample of Quality Management Committee minutes over the span of a year. The minutes, which summarize report information, cite current data on the agenda topics only. The discussion section of the minutes provided snapshot statistical data in specific reports but did not include comparison data or trending over time, nor did it indicate any discussion by the committee of the information presented. There were few recommendations for quality improvement or risk reduction noted in the minutes, leading the Grand Jury to conclude that either the minutes were incomplete or there is non-adherence to the report format.

The Crisis Stabilization Unit, which houses the most acutely mentally ill people, identifies a Quality Improvement Committee (QIC) in its Quality Improvement Policy 7600. A Health Care Agency employee told the Grand Jury that this is an outdated policy and that mental health concerns were reported via Quality Management Committee meetings. According to the policy, the purpose of the committee is to enhance the quality of inmate care delivered in the Crisis Stabilization Unit, identify important problems or concerns in the care of inmates, objectively assess the cause and scope of identified problems or concerns, and implement appropriate corrective action to the extent possible. As noted above, mental health data, including suicide attempts or other self-injurious behavior, is presented to the Quality Management Committee sporadically. Officials associated with the Crisis Stabilization Unit and Mod L stated that no data is kept on anything related to medical treatment in these areas. Another medical staff stated that Correctional Health Services staff did not have access to reports related to medical or mental health services.

During the course of the Grand Jury's investigation, several requests for data regarding the care and treatment of mentally ill inmates were made during interviews with various Sheriff and Correctional Health Services staff. While some of the requested information was readily available, data that would typically be considered routine was not easily accessible. Some of the

mental health related data requested is not kept or monitored by anyone. Staff routinely directed the Grand Jury to other entities who they thought might keep the type of data requested. One example of this is safety cell data. Due to the extreme conditions associated with a safety cell, along with Department of Justice concerns, trends and analysis of safety cell usage may assist in reducing the number of uses, or even reduce the amount of time spent in the safety cell. Although data is kept on the number of times the safety cell is used per month, no aggregate data is collected regarding the average length of stay, the number of times an inmate utilizes the safety cell multiple times, times/day of week safety cell most often utilized, injuries sustained while in the safety cell, or use of forced medication in conjunction with the safety cell.

There are several examples of data collection regarding the care and treatment of mentally ill inmates that would provide greater insight into current practices and assist staff in developing quality improvement activities in Mod L and the Crisis Stabilization Unit. A few examples include analysis of therapy group effectiveness in the Crisis Stabilization Unit, data on inmates who leave Mod L for regular housing and then return to Mod L, data on inmates who leave Mod L for the regular housing and ultimately get assaulted or assault other inmates, and data on inmates who are declared Incompetent to Stand Trial (IST).

Sheriff's Department

Quality assurance and risk management activities are generated from two main sources in the Sheriff's Department – Strategy. Accountability. Focus. Evaluation. (S.A.F.E.) and the Jail Compliance and Training Team (JCATT). The two entities are both under the umbrella of the Sheriff's Department, but work independently of each other.

S.A.F.E.

The S.A.F.E. Division was initiated in 2008 as a method for reviewing various aspects of the Sheriff's Department, including civil litigation, risk management, critical incidents, crime analysis, policy and training, worker's compensation, etc. The Grand Jury found this department to be effective in gathering and analyzing data related to various aspects of the Sheriff's Department. Inmate care and treatment in the jail system is excluded from S.A.F.E. data collection, except for use of force in the jails. There are no formal reports which provide Sheriff Command staff or Correctional Health Services tracking and trending of patterns over time related to jail activity, nor are there any quality improvement activities specifically associated with this review process.

Jail Compliance and Training Team

The quality assurance and risk management component associated specifically with incarceration is the Jail Compliance and Training Team (JCATT). None of the JCATT staff has a quality

assurance background but all have experience with staff training. One main task is maintenance of the Custody and Courts Operations manual, which includes policies on the housing, care and treatment of inmates. JCATT is also responsible for identifying jail trends and issues and posting training materials on its intranet website, handling discoveries/subpoenas/ Public Record Act (PRA) requests, completing standard reports, and initiating research on special projects as assigned. The completed reports and projects are made available to Sheriff Command staff and others as identified. There is no formal Quality Assurance Committee or other systematic process for reviewing reports, tracking trends, or initiating quality improvement plans based on information contained in the reports.

Inmate Services Division

Staff from the Inmate Services Division stated that the current data system is antiquated. Data systems throughout the Sheriff's Department are isolated since there is no centralized database. An updated, centralized system would evaluate the effectiveness of treatment programs for inmates, which would also assist with maintaining and possibly increasing educational funding for inmates.

The Sheriff's Department is currently addressing the lack of a centralized database by pursuing a new integrated system, identified as the Jail Management System. According to staff, the Request for Proposal (RFP) process should be completed by July 2016. The new system will reduce redundancies and increase efficiency. Many work process flows must be completed prior to purchase of the new system, as they will be combined into one comprehensive database that can be cross-referenced. Due to the complexity of the Jail Management System as it is currently imagined, implementation is not expected to be completed for one to two years. The data analysis piece will be one of the last components in place, but once it is incorporated the system is expected to have long term trending capabilities.

Inmate Grievance Process

California Code of Regulations, Title 15, §1073 mandates that a written policy and procedure must be in place to ensure inmates have the opportunity to file a grievance related to several conditions of confinement, one of which is medical care. The Sheriff's Department has taken the lead in the grievance process for the correctional system, but Correctional Health Services also plays a significant role, as it addresses all medical care complaints, which includes mental health care and treatment.

The Grand Jury requested data on grievances that had been filed in 2015. The Sheriff's Department was unable to provide the data within a reasonable timeframe. When data was collected for the Grand Jury it was with the caution that it was probably inaccurate. According to a County official, the Grand Jury request alerted them to an issue with the quality assurance

component of the grievance process. No one in the Sheriff's Department officially analyzes grievance data for trends on the major complaint areas, but some information is received and reviewed with Command staff.

According to the Sheriff's Department, the Department of Justice expressed concern during one of their investigations that the grievance system does not work as it should. Changes have since been made to the process but monitoring to ensure those changes are effective remains an issue.

Grievances related to medical care and treatment are forwarded to Correctional Health Services, which has a system in place for tracking and analyzing grievance data. Grievance Process Policy (1013) indicates that findings related to the grievance process should be included in a Quality Improvement program. Further, qualitative data should be maintained for all types of grievances and outcomes in order to identify opportunities for improving services. A review of Quality Management Committee meeting minutes indicated that Inmate Grievance reports are submitted for committee review on a regular basis. The minutes reflected data collected but the Grand Jury found no evidence of committee discussion of the report information, data analysis, trending/comparison over time, or recommendations for quality improvement activities.

The Future of Incarcerated Mentally Ill Individuals in Orange County

According to the Stanford Law Study, voters and policymakers are demonstrating a greater willingness to separate true criminals from those whose actions are not driven by aggression, violence, or ill-intent. The concept of vengeance can no longer be treated as the sole or primary focus of criminal sentencing, but should instead be treated as only one of several factors (including individual culpability and rehabilitation) that inform a just sentence. Persistent injustices of modern criminal law must not be ignored, including the fact that a dominant root of much criminal activity is mental illness. (Steinberg, 2015)

Orange County policymakers have shown a desire to address issues of incarcerated mentally ill individuals. According to an article in the Voice of OC (March 2016), and confirmed by interviews with County staff, Orange County officials from the Probation Department, the Health Care Agency, and the Board of Supervisors traveled to Washington DC to attend a national summit, which focused on reducing the number of adults in jail with mental illness and substance abuse disorders (Voice, 2016). The *Stepping Up Initiative*, which is spearheaded by the National Association of Counties, the Council of State Governments Justice Center and the American Psychiatric Association, is working to advance counties' efforts to address mental illness in the jails by developing a system level plan. They are building on the foundation of innovative and evidence-based practices already being implemented across the country and are working with partner organizations with expertise in the complex issues addressed by the Initiative. The cost to

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counties of our current system of incarcerating mentally ill individuals is unsustainable. This collaboration seeks to treat problems such as mental illness and addiction as a public health issue, not a criminal justice issue (Stepping).

Additionally, in April 2016, the Board of Supervisors held a public forum on Orange County's mental health system. According to an article in the Voice of OC (April 2016), people in attendance voiced concerns that the current criminal justice system is both ineffective and unjust for people with mental health issues (Gerda, 2016). The hope is that Orange County will become a model for an effective mental health system that can deter an individual from becoming involved in the criminal justice system.

FINDINGS

In accordance with *California Penal Code* Sections 933 and 933.05, the 2015-2016 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 “Our Brothers’ Keeper: A look at the Care and Treatment of Mentally Ill Inmates in Orange County,” the 2015-2016 Orange County Grand Jury has arrived at 22 principal findings, as follows:

- F.1.** Mod L, located in the Intake and Release Center, has an insufficient number of beds to accommodate all mentally ill inmates who would benefit from regular interaction with medical, psychiatric, nursing, and case management services. The lack of bed space for the number of mentally ill inmates who need acute services supports the Department of Justice concern that the jail needs to act to prevent mental health crises and provide adequate transition programs, not just to deal with the most immediate urgent needs.
- F.2.** Correctional Health Services provides minimal mental health treatment services in the form of therapy groups to less than 1% of the total jail population diagnosed with some type of mental illness, which precludes therapeutic treatment to most mentally ill inmates.
- F.3.** The Intake and Release Center has no system for ensuring humane treatment of an inmate in a safety cell. Examples include: the inmates are cold, they sleep next to a grate that is used as a toilet, and no water is available for the inmate to wash hands after the use of the toilet and prior to eating meals.
- F.4.** Correctional Health Services uses the safety cell as a substitute for treatment. There are no measurable and observable criteria for moving someone into a safety cell, or immediately removing inmates when they are no longer a threat to themselves or others, which has the potential to result in the use of safety cells for disciplinary purposes.
- F.5.** A psychiatrist is the only person authorized to remove an inmate from a safety cell, however, one is not always available to do so, which may result in a longer term of confinement than necessary.
- F.6.** Correctional Health Services staff does not hold a debriefing meeting after each use of the safety cell. Therefore, CHS is unable to identify how the treatment failure occurred and to help prevent future occurrences, including suicide attempts.

- F.7.** Neither Correctional Health Services nor Sheriff's Department staff collects or analyzes data related to safety cell usage other than how often it is used, and therefore, neither has any quality improvement or risk management activities to assist in reducing safety cell use.
- F.8.** The Orange County Jail does not have a Restoration of Competency treatment program, to the detriment of inmates declared incompetent to stand trial by the courts. Wait time for transfer to a state hospital does not meet the directive of the court system to transfer within 30-35 days.
- F.9.** Data demonstrates that the Collaborative and Community Courts provide effective treatment services for mentally ill offenders who qualify for the programs.
- F.10.** Collaborative Courts save the County a significant amount of money in decreased incarceration and recidivism rates.
- F.11.** The current number of jail psychiatrists is not sufficient to meet the needs of the general inmate population diagnosed with mental illness. This shortage has resulted in extended periods of time inmates spend in safety cells, as well as a lack of psychiatric services in all but a very small portion of the Orange County Jails. The Department of Justice findings support the concern that therapeutic treatment may not reach prisoners who may be quite ill, but are not the most obviously in need of mental health care.
- F.12.** Orange County has become a model for successful implementation of Laura's Law in the State of California. Behavioral Health Services keeps comprehensive statistics on all aspects of Laura's Law and therefore can effectively analyze the program's strengths and weaknesses.
- F.13.** Correctional Health Services does not provide therapeutic treatment services to inmates with a chronic mental health diagnosis in most parts of Mod L or in any of the general jail housing. This small concentration of service supports the Department of Justice concern that the jail does not provide for a cohesive system of therapy and treatment.
- F.14.** There is a lack of adequate classroom space to conduct educational classes for inmates who would benefit from participation in inmate services programs.
- F.15.** Correctional Health Services has no written guidelines, no formal course of study, and no specific training for case managers or nursing staff who conduct group therapy sessions on Mod L Crisis Stabilization Unit.

- F.16.** Sixteen beds in Ward D are insufficient to meet the needs of the large number of inmates with chronic mental health issues outside of Mod L.
- F.17.** Although the Sheriff's Department has a Memorandum of Understanding with the Health Care Agency to provide mental health care services to Orange County jail inmates, the two entities do not have a formal system in place for sharing mental health data that affects both entities.
- F.18.** The Jail Compliance and Training Team, made up of Sheriff's Department personnel, does not include anyone with a Quality Assurance background. Although the Jail Compliance and Training Team completes standard reports and provides them to Sheriff's Command staff, it does not consistently collect and analyze data over time to identify trends.
- F.19.** The Sheriff's Department has designated sergeants in each jail facility to enter inmate grievances into a centralized database, but there is no organized system in place for selecting data from the database or analyzing trends, and therefore, no quality improvement activities take place to identify or address potential issues.
- F.20.** The Health Care Agency/Correctional Health Services collects health care related grievance data and presents it to the Quality Management Committee on a regular basis, however, the data is not formally analyzed to identify trends and the Quality Management Committee minutes do not demonstrate discussion on the implementation of quality improvement activities based on the data presented.
- F.21.** Neither the Sheriff's Department or Correctional Health Services has developed and initiated a formal process to address or track lingering issues identified in the 2014 Department of Justice correspondence. Additionally, they do not have a formal system in place to track improvement plans that may have been put into place to correct Department of Justice concerns.
- F.22.** The Crisis Stabilization Unit does not have a system in place to collect or analyze data. Additionally, they do not have any formal quality improvement activities specific to Mod L treatment services, and therefore are unable to objectively evaluate the effectiveness of therapy groups.

RECOMMENDATIONS

In accordance with *California Penal Code* Sections 933 and 933.05, the 2015-2016 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 “Our Brothers’ Keeper: A Look at the Care and Treatment of Mentally Ill Inmates in Orange County Jails,” the 2015-2016 Orange County Grand Jury makes the following 17 recommendations:

R.1. The Sheriff’s Department should establish an ad hoc committee by December 31, 2016 to review space utilization in the Intake and Release Center with the goal of establishing additional units where inmates with mental health issues can be housed in closer proximity.
F1, F16, F21

R.2. The Health Care Agency/Correctional Health Services should develop a therapeutic program by October 31, 2017 that includes a formal course of studies to include **all** inmates in Mod L, and provide training to facilitators to ensure consistency.
F2, F13, F15, F21

R.3. The Health Care Agency/Correctional Health Services should develop a process by December 31, 2016 to ensure that safety cell entrance and exit criteria are clearly defined, measurable, and observable.
F4, F5, F6, F21

R.4. The Sheriff’s Department and the Health Care Agency/Correctional Health Services should implement a protocol to ensure an inmate in a safety cell has access to water for washing hands after using the toilet and before and after meals by September 30, 2016.
F3, F21

R.5. The Sheriff’s Department should develop a plan to eliminate the environmental issue of inmates being excessively cold in safety cells by December 31, 2016.
F.3, F21

R.6. The Health Care Agency/Correctional Health Services should develop a protocol by December 31, 2016 to authorize nurse practitioners to release inmates from a safety cell.
F5, F21

R.7. The Health Care Agency/Correctional Health Services should establish a debriefing protocol by December 31, 2016 to address each safety cell use in order to properly evaluate

any treatment failure and put a plan in place to reduce reoccurrence.
F6, F21

R.8. The Sheriff's Department and the Health Care Agency/Correctional Health Services should collaborate on a process by December 31, 2016 to collect and analyze the following safety cell data:

- the average length of stay
- the number of times an inmate is moved to the safety cell more than once
- the day and times safety cells are most utilized
- any injury sustained on the way to, or inside the safety cell
- the use of forced medication in conjunction with safety cell use

Data should be incorporated into risk reduction activities that are monitored by the Sheriff's Department and the Health Care Agency/Correctional Health Services.

F7, F17, F18, F21

R.9. The County should provide financial assistance through the budgetary process, or some other means such as the Mental Health Services Act (Prop 63) by June 30, 2017, for additional Collaborative Court services that can reduce the current wait list and serve a greater number and variety of mentally ill offenders.

F9, F10

R.10. The Health Care Agency should develop a recruitment strategy for hiring additional full time psychiatrists by December 31, 2016, in order to better meet the needs of mentally ill inmates throughout the Orange County jails.

F11, F21

R.11. The Health Care Agency/Correctional Health Services should develop and implement therapeutic and educational curricula specific to the needs of mentally ill inmates in all parts of the Orange County jails by June 30, 2017.

F2, F13, F15, F21

R.12. The Sheriff's Department and the Health Care Agency should collaborate to initiate Thinking for a Change, or a similar therapeutic program, in all areas of the jail, including Mod L, by June 30, 2017, and give first priority to inmates with a mental health diagnosis.

F2, F13, F14, F21

R.13. The Sheriff's Department and the Health Care Agency/Correctional Health Services should integrate quality assurance data into their regular standing meetings, or establish a new standing committee by December 31, 2016, where the data includes:

- use of safety cells

- the effectiveness of transfers out of Mod L into the general jail population
- inmate grievances
F17, F19, F20, F21

R.14. The Sheriff's Department should expand the S.A.F.E. division to include a quality risk management team that will collect and analyze data throughout the jail, with a component that will address services provided to mentally ill inmates by June 30, 2017. Consideration of expansion should include incorporating the Jail Compliance and Training Team(JCATT) into S.A.F.E.
F18, F21

R.15. The Sheriff's Department should establish a standing quality management committee that meets at least quarterly to review and analyze data with the goal of improving inmate services by December 31, 2016. The Committee should include representatives from Command Staff, S.A.F.E., JCATT, and Mod L medical, nursing, and case management staff.
F18, F19, F21

R.16. The Sheriff's Department should develop and implement a plan by December 31, 2016 to ensure that the jail grievance policy and procedure is followed.
F19

R.17. The Health Care Agency/Correctional Health Services should review its quality management committee structure by December 31, 2016 to ensure issues identified in reports are thoroughly analyzed. Trends should be identified and addressed through quality improvement activities. The minutes of the meeting should reflect committee discussion and decisions regarding trends. Minutes should also reflect follow-up actions taken to ensure resolution of identified issues.
F20, F21, F22

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 County 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), detail, as follows, the manner in which such comment(s) is 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 therefor.

(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 therefor.

(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:

Our Brothers' Keeper: A Look at the Care and Treatment of Mentally Ill Inmates in Orange County Jails

Responses Required:

Responses are required from the following governing bodies within 90 days of the date of the publication of this report:

90 Day Response	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F
Required:	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
Board of Supervisors	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X			X	X	X

90 Day Response	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	
Required:	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Board of Supervisors		X	X	X		X	X	X	X	X	X	X	X				X

Responses are required from the following elected agency or department head within 60 days of the date of the publication of this report:

60 Day Response	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	
Required:	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
Sheriff/Coroner	X		X				X	X					X	X		X	X	X	X	X	X	

60 Day Response	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	
Required:	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
OC Sheriff	X			X	X			X				X	X	X	X	X	

Responses Requested:

Responses are requested from the following non-elected agency or department heads:

Response	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F	
Requested:	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
Health Care Agency		X		X	X	X	X	X	X	X	X	X	X	X	X		X			X	X	X

Response	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	
Requested:	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Health Care Agency		X	X	X		X	X	X		X	X	X	X				X

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APPENDIX A: ACRONYMS

AB 109: Assembly Bill 109; also Proposition 47- Public safety legislation passed in April 2011 that shifted responsibility for certain population of offenders from the state to the counties. Known as "California Public Safety Realignment Act of 2011.

AI: Assisted Intervention Court. One of the courts in the Orange County Collaborative Courts system.

AOT: Assisted Out-patient Treatment: *California AB 1194*, also known as Laura's Law is court ordered out-patient treatment.

CCP: (Orange County) Community Correction Partnership

COD: co-occurring disorder (such as mental illness and drug abuse occurring at the same time)

CONREP: California Forensic Conditional Release Program: a community outpatient mental health program

CPT: Correctional Program Technician

CSU: Crisis Stabilization Unit: a division in Mod L housing of the IRC (see below) which houses the most acutely mentally ill.

DOJ: Department of Justice

FCC: Federal Communications Commission

HCA: (Orange County) Health Care Agency

HIPAA: Health Insurance Portability and Accountability Act of 1996: legislation that provides data privacy and security provisions for safeguarding medical information.

IRC: Intake and Release Center: area of the Orange County Central Jail where individuals are initially processed and finally released.

IST: Incompetent to Stand Trial: A court declaration on competency which results in the filing of a §1370.

JCATT: Jail Compliance and Training Team: part of the Sheriff's Department jail management system.

LCSW: Licensed Clinical Social Worker

Our Brothers' Keeper: A Look at the Care and Treatment of Mentally Ill Inmates in Orange County Jails

LPS: Lanterman-Petris-Short Act: *California Welfare and Institutions Code section 5000* et seq. concerns the involuntary civil commitment to a mental health institution in the State of California.

LPT: Licensed Psychiatric Technicians

MFT: Marriage Family Therapists

MHSA: Mental Health Services Act: Proposition 63: applies a 1% tax for the funding of mental health programs on Californians earning \$1 million or more.

MOU: Memorandum of Understanding

NP: Nurse Practitioner

OIR: Office of Independent Review: Orange County office which, at the time of this writing, advises the Sheriff.

PhD: a doctorate degree based on three years of study and a dissertation.

POST: Peace Officer Standards and Training: California officer training standards

PRA: Public Record Act

PTSD: Post Traumatic Stress Disorder: A mental health condition.

QIC: Quality Improvement Committee

QMC: Quality Management Committee

ROC: Restoration of Competency: Program offered in state mental hospitals and in the San Bernardino Sheriff's Department program that, when completed successfully, enables an individual to participate in his/her defense at trial.

S.A.F.E.: Strategy. Accountability. Focus. Evaluation.: Quality assurance division of Orange County Sheriff's Department.

SBSD: San Bernardino Sheriff's Department

VA: Veteran's Administration

WIT: Whatever It Takes: One of the courts in the Orange County Collaborative Courts system.

APPENDIX B: Discussion of Applicable Laws

Freddie Mille v Los Angeles County

Lanterman-Petris-Short Act: Welfare & Institutions Code Section 5150, et al
Riese Hearings

Freddie Mille v Los Angeles County

In *Freddie Mille v Los Angeles County* (2010) the Second District Court of Appeal held that the common practice of providing medication alone to mentally ill defendants in jail “did not legally constitute the kind of treatment efforts that are required to restore someone to mental competency.” Thus the transfer of an inmate to a treatment facility in a timely manner is legally required and the courts recommend that it be completed in no more than 30-35 days.

Here, following the commitment order, Mille was kept in the county jail for 84 days before the sheriff transferred him to Patton for evaluation and treatment. The fact the county jail administered antipsychotic medication to Mille while he was housed there, pursuant to section 1369.1, was not a substitute for a timely transfer to Patton for evaluation and treatment to restore Mille's competence to stand trial.

The sheriff's failure to transfer Mille was first called to the attention of the trial court 30 days after the commitment order, when the public defender filed the initial petition for writ of habeas corpus challenging Mille's prolonged confinement in the county jail. We conclude, minimally, instead of denying Mille's initial petition for writ of habeas corpus, filed June 3, 2009, the trial court should have ordered the sheriff to deliver Mille promptly to Patton for evaluation and treatment. (In *re Stoliker* (1957) 49 Cal.2d 75, 78 [habeas corpus is proper remedy to secure confinement under proper authority].) Likewise, on the facts presented, this court should have granted the habeas petition which Mille filed in this court on June 26, 2009, and directed Mille's immediate transfer to Patton. (Court of Appeal, Second District, Division 3, California. *IN RE: Freddy MILLE*, on Habeas Corpus. No. B217102. Decided: March 3, 2010. KLEIN, P. J.)

This case is particularly germane to the discussion of IST individuals in Orange County jails because the Grand Jury learned that public defenders are citing this decision in court in order to expedite their client's transfer out of jail and into a state hospital where they can be restored to competency. Filing a petition of Habeas Corpus focuses the Court's attention on the reality that the individual is being detained in jail, where there is no treatment for his mental condition, and thus he is no closer to an adjudication of the charges brought against him. The defense attorney can argue that incarceration of his client is a violation of his constitutional rights and, if successful, the Court may order the inmate's release.

The Grand Jury also learned that, when the public defender files a Writ of Habeas Corpus, the state hospital is able to find the inmate a bed the day before the hearing.

Lanterman-Petris-Short Act: Welfare & Institutions Code, Section 5150 et al;

Riese Hearings

§5150. (a) When a person, as a result of a mental health disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, professional person in charge of a facility designated by the county for evaluation and treatment, member of the attending staff, as defined by regulation, of a facility designated by the county for evaluation and treatment, designated members of a mobile crisis team, or professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention, or placement for evaluation and treatment in a facility designated by the county for evaluation and treatment and approved by the State Department of Health Care Services. At a minimum, assessment, as defined in Section 5150.4, and evaluation, as defined in subdivision (a) of Section 5008, shall be conducted and provided on an ongoing basis.

The Lanterman-Petris-Short (LPS) Act, as cited above sets the precedent for modern mental health commitment procedures in the United States. It deals with the involuntary civil commitment of an individual to a mental health institution in the State of California, pursuant to the California Welfare and Institutions Code, and is commonly referred to as a §5150 hold. Other holds under this Code section include: a §5250: 14 day extended hold; and a §5270: 30 day extended hold. Individuals on a §5250 or a §5270 have a right to counsel and their attorney can file a Writ of Habeas Corpus, which would result in the court having to justify the individual's continued detention.

In 1991, the California legislature enacted SB 665, mandating informed consent, emergency medications and capacity hearings procedures to implement *Riese*: the 1987 judicial decision recognizing mental health patients' rights to give or refuse consent to medication.

If an inmate is not coping well in jail, refusing medication and decompensating he/she may be placed on a §5150 hold. At that point he/she is becoming a danger to himself/herself and/or others. When an inmate is placed on a §5150 hold, the next step is to either convince them that it is in their best interest to take medication or petition the Court in the form of a Riese Petition, or medication capacity hearing, to forcibly medicate the inmate.

At the core of Riese is the legal presumption that all mental health clients are competent. Under the law, "No person may be presumed incompetent because he or she has been evaluated or treated for a mental disorder, regardless of whether such evaluation or treatment was voluntarily or involuntarily received" (California W&I Code §5331). In Orange County, the jail psychiatrist makes the determination that someone is gravely disabled. The Crisis Stabilization Unit (CSU)

team discusses and determines the need for a Riese Petition. The nurse completes the required paperwork and notifies the public defender. Specific requirements for a Riese Hearing include:

- Informed consent;
- Offer of medication and refusal;
- Petition for a capacity or Riese Hearing;
- Presentation of the case by the treating physician;
- Rebuttal (County Counsel);
- Right of Review;
- Court Ruling

The standard of proof at Riese Hearings is "clear and convincing evidence." This means that the evidence is "so clear as to leave no substantial doubt, sufficiently strong to command the unhesitating assent of every reasonable mind." (*Lillian F. v. Superior Court*, 160 Cal. App. 3d 314, 320, 206 Cal. Rptr. 603, 606 (1984)). This is a very high standard; considerably higher than "probable cause" and beyond that required in most civil proceedings, "preponderance of evidence."

APPENDIX C: COLLABORATIVE COURTS

Collaborative Court programs at the Community Court include Drug Court, DUI Court, four Mental Health Courts, Veterans Treatment Court, and Homeless Outreach Court (Community Court brochure).

COURT	CONTACT	INFORMATION
Drug Court	Kim Parsons	657.622.5816 kparsons@occourts.org
DUI Court	Kim Parsons	657.622.5816 kparsons@occourts.org
Mental Health Courts <ul style="list-style-type: none">➤ AI Court➤ WIT Court➤ Opportunity Court➤ Recovery Court	Jim Mahar	657.622.5818 jmahar@occourts.org
Veterans Treatment Court	Kim Parsons	657.622.5816 kparsons@occourts.org
Homeless Outreach Court	Kathi Chapman	657.622.5985 kchapman@occourts.org

APPENDIX D: The California Forensic Conditional Release Program (CONREP)

There is greater flexibility with IST individuals charged with felonies not considered violent or with misdemeanors. Misdemeanor IST defendants and individuals charged with nonviolent felonies may be placed directly in CONREP for outpatient treatment for restoration. (Penal Code §1601, §1601(a) and (b), §1630, 1370.01(a)(1)(A).

The CONREP is an outpatient treatment and supervision program for individuals who are under forensic commitments with the Department of State Hospitals and who the court has determined can be treated safely and effectively in the community (Penal Code §1602, §1603). Programs are administered by County and funded by the State of California. The Department of Mental Health contracts with County mental health programs, private agencies, or non-profits to provide services.

The purpose of CONREP is to provide comprehensive community outpatient treatment and supervision to several different Penal Code classifications of individuals, including mentally disordered offenders (PC. §2962 or §2970). Services provided to individuals entering the CONREP program include:

- Individual therapy
- Group therapy
- Home visits
- Contacts with family, friends, and the community
- Screenings for drug and alcohol use and
- Periodic assessment

When an individual enters the CONREP program, he/she is required to sign a document that sets forth the terms and conditions of the program. Violating the terms and conditions is grounds for revocation and return to state hospital. An individual who is re-hospitalized is committed until the court or the Board of Parole Hearings decides he/she is ready to try community treatment once more. Only the court can and will discharge the commitment once the individual has achieved competency to stand trial. If the court determines the individual will never be competent to stand trial, the court will place him/her on “Murphy” Conservatorship (P.C. §1370; §5008(h) [2]) in order to attend to the fact that he/she remains dangerous and unable and/or incompetent to manage his/her own affairs. If an individual still needs treatment after his/her commitment is terminated, CONREP staff will put him/her in touch with mental health services and a therapeutic program in the community.

**ORANGE COUNTY'S
\$4.5 BILLION UNFUNDED PENSION
LIABILITY & RETIREMENT PLANS**



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EXECUTIVE SUMMARY

Orange County's (County) unfunded pension liability exploded from 2000 to 2012, going from a surplus in 2000 to a \$4.5 billion liability in 2012. In January 2016 the County issued pension obligation bonds in the amount of \$334 million. The numbers are huge. The fact that the County has an unfunded liability is no secret. Unfunded pension liabilities are very well known to the public.

The Grand Jury and the public are well aware that local units of government have unfunded pension liabilities, but the magnitude of Orange County's liabilities is, at first glance, difficult to understand. During the Grand Jury's investigation into the County's unfunded pension liability it discovered a number of elements that, in part, mitigated concerns over these very large amounts. These included:

- When compared to its peer units of government in California, Orange County at 70% funded is in the median range (70-80%) of pension liability funding;
- Unfunded pension liabilities of the County have been reduced by over \$500 million (11%) since 2012 after many years of dramatic increases;
- Effective with this year's audit, the Government Accounting Standards Board (GASB) has new accounting standards requiring that government entities clearly state their unfunded pension liability as a line item on their balance sheet, making it easy to identify the actual unfunded pension liability;
- Orange County Employees' Retirement System (OCERS) has reduced the amortization of the unfunded liabilities from 30 years to 20 years, helping to reduce the liabilities faster; and
- Short term bonds that were issued so that County could avail itself of a sizable discount offered by OCERS.

The reduction of unfunded liabilities in recent years is contrary to OCERS actuary's forecast, which projects increases totaling 8% in the next four years, followed by declining levels. This contradiction needs to be resolved.

This Grand Jury appreciates the manner in which the unfunded pension liabilities are being administered, but the County should be more aggressive in reducing the unfunded pension liabilities and urge OCERS to do the same.

Over the years the County has adopted several restricted defined contribution retirement plans, one of which is provided exclusively for County elected officials and senior executives. The latter plan is funded exclusively by the County with no contribution required by the individual.

The Grand Jury is also concerned that County employees are not treated equally in pension/retirement choices offered. The Grand Jury has provided a number of findings and recommendations that should allow the County to further reduce its unfunded pension liability and provide for a more equitable pension/retirement choice.

BACKGROUND

Public concern regarding potentially unsustainable government pension obligations, nationally, and particularly in California, has intensified during the past decade. The gap between a government entity's pension assets and its liabilities for current and future pensions is known as the Unfunded Actuarial Accrued Liability (UAAL) or Unfunded Pension Liability.

Most public jurisdictions in California (i.e., states, counties, school districts, special districts and cities) have accrued large unfunded pension liabilities. The public is affected whether the unfunded pension liabilities is growing or whether it is being reduced. If the liability is increasing, then less is being spent on County services; if it is being reduced, more of the annual budget can be used for services to the taxpayers.

According to many interviews conducted by the Grand Jury, factors affecting increases in unfunded pension liabilities include:

- Changes in labor agreements
- Legislation
- Not achieving assumed investment returns
- Changes in mortality rates
- Enhanced retirement benefits for public safety employees and general employees
- Retirement and hiring rates
- Assumptions regarding the economy

The 2013-2014 Orange County Grand Jury reported that as of December 2012, the 34 cities in Orange County had an aggregate of \$3.3 billion in unfunded pension liabilities which will need to be funded over the next several decades. Since Orange County was not assessed as part of that report, the 2015-2016 Grand Jury took the opportunity to investigate the unfunded pension liability of the County.

In January 2016 a web search for “unfunded pension liabilities” in the *Orange County Register* resulted in 3,538 articles, commentaries and editorials published during the past 10 years. These spoke to all levels of local government jurisdictions, plus state and federal government pensions systems, and unfunded liabilities. In addition, there has been massive exposure in other media, locally and nationally, including a segment on the CBS “60 Minutes” television show. Thus, the subject matter of unfunded pension liabilities is not only well-known to the general public, it is cause for great concern.

The County’s UAAL grew from a surplus of approximately \$130,000 in 2000 to a liability of over \$4.5 billion, 80% of OCERS’ UAAL in 2012 (OCERS 2015). Further, the Grand Jury discovered that the County issued short term Pension Obligation Bonds in the amount of \$339 million in early 2015 and \$334 million in early 2016 to pay the required annual County contribution into the retirement system (County Official Statement, 2016).

Four and a half billion dollars is a huge obligation which ranks Orange County in the lower end of the range when compared to other large California jurisdictions as shown in Table 1 below.

Jurisdiction	% of Liabilities Funded
City of Los Angeles	67
Los Angeles County	75
Orange County	70
Riverside County*	73-93
San Bernardino County	82
City of San Diego	70
San Diego County	75
City and County of San Francisco	80

*Reported separately by each Riverside County Department. Other information extracted from 2013-2014 Financial Reports. Does not take into account any long term Pension Obligation Bonds that may have been issued.

Table 1. Percent of Pension Liabilities Funded by Jurisdictions

As a general comparison, according to an article issued by Bloomberg Business on November 12, 2015, “the median state pension last year had 70% of the assets needed to meet promised benefits” (Bloomberg.com, Mar 08, 2016). The Grand Jury believes that this does not relieve the County from its obligation to increase the funded portion of the liability.

Orange County had 18,135 full- and part-time employees as of late 2015, and a 2015-16 fiscal year budget of nearly \$6 billion. This employment figure includes the Sheriff/Coroner department, but excludes the Orange County Fire Authority, which is a separate public jurisdiction.

In 2012, OCERS, which manages portions of the pension money for the employees of the County and other jurisdictions, adopted a more aggressive 20 year amortization schedule to retire the unfunded pension liability. It previously used a 30 year amortization schedule. This choice is similar to choosing to pay off a 30 year home loan in 20 years. This approach costs more annually, but the homeowner is out of debt 10 years sooner. OCERS has also reduced its anticipated annual investment return from 7.75% to a more realistic 7.25%. (See Figure 1)

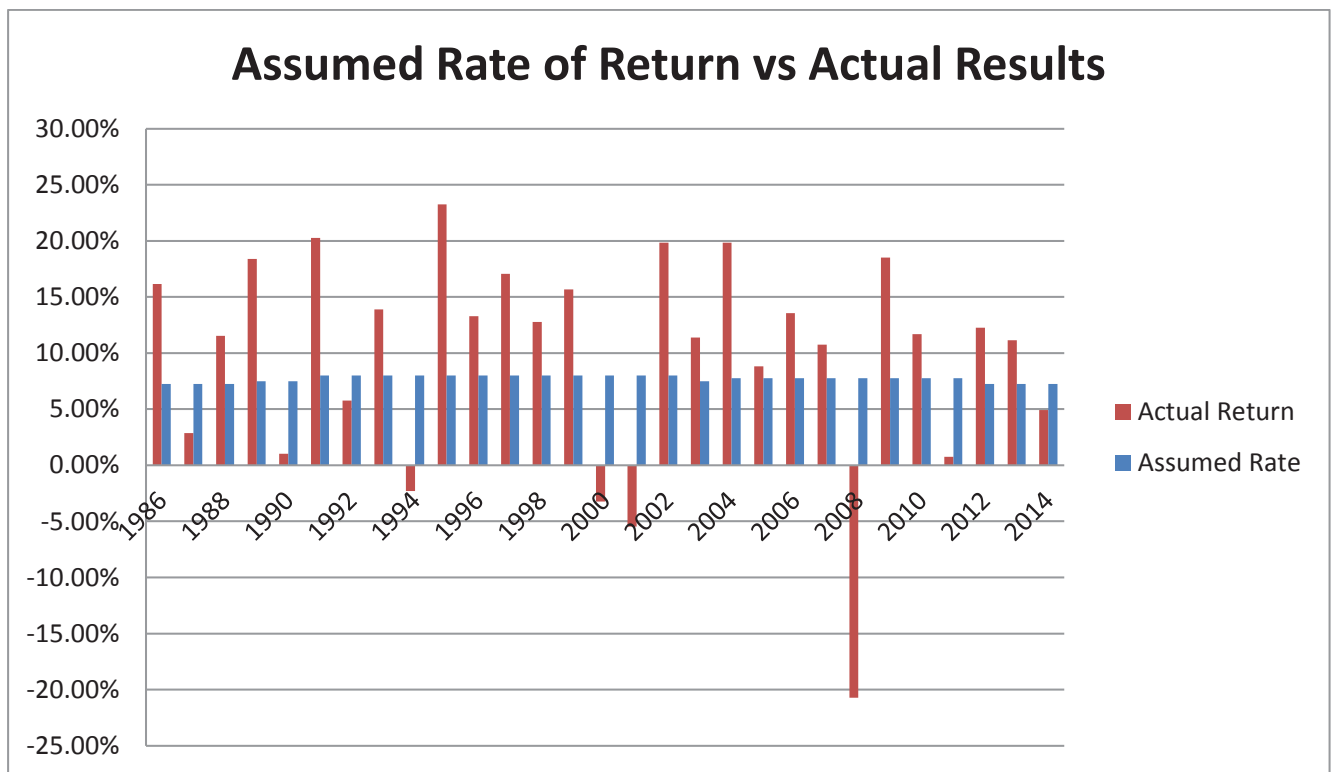


Figure 1. Generated from OCERS Data in a Report “By the Numbers” 2014

Funding Levels of UAAL

The level at which pension obligations should be funded is the subject of some debate. However, discussions conducted by the Grand Jury with retirement sources at both OCERS and the County suggest that an 80% funded level of pension liability is a reasonable short term objective. When the funding level increases above 80%, it can create pressure by employee bargaining units to increase benefits and or wages.

There are many variables that affect the level of liabilities of a pension system, but the Grand Jury agrees that the County and OCERS are using reasonable assumptions in their forecasts. As of June 30, 2015 OCERS (and therefore the County) has funded approximately 70% (or 30% unfunded) of its total liabilities (OCERS). The County must be vigilant in maintaining the current direction of reducing the unfunded liability.

Figure 2 presents the dramatic range of the 30 year history of OCERS funded level from 57% in 1985 to 103% in 2000, a boom year in the stock market. During the first 10 years of this century the unfunded dollar amounts grew significantly from year-to-year causing the percent funded to decline. However, in recent years, the percent funded has risen, due primarily to the effects of Public Employees’ Pension Reform Act (PEPRA), an improved economy, and investment returns. As a result there has been an improvement in the funded level of pension liability since 2012 of approximately \$569 million (62% up to 70%) as reflected in Figure 1 (OCERS).

REPORT
9

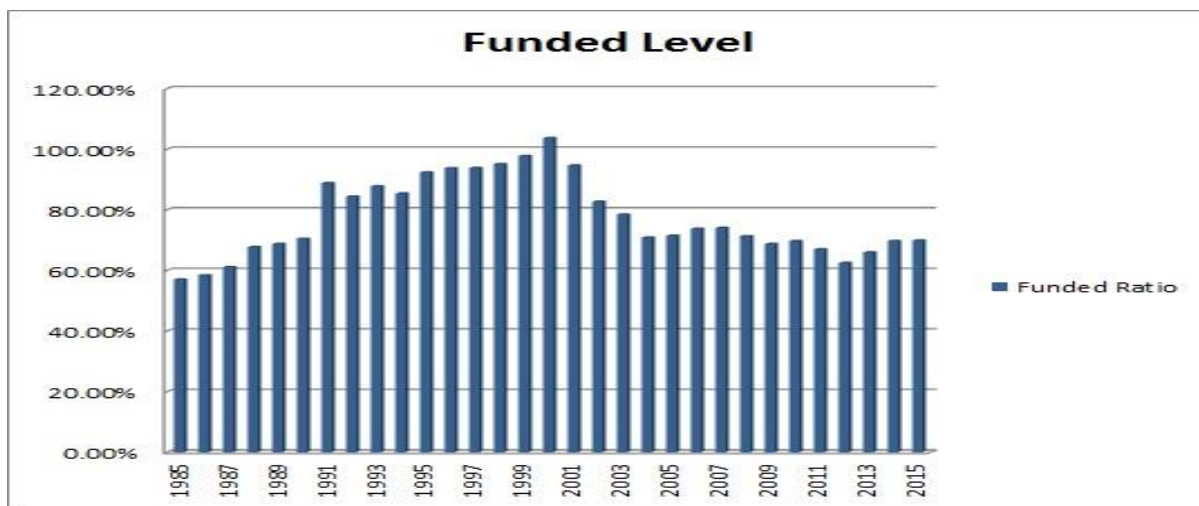


Figure 2. Percent of Funded Pension Liability

Early Payment Discount Plan

For 10 years, OCERS has offered an early payment discount to its member organizations. Orange County represents approximately 80% of OCERS members and assets. If a participating government entity provides OCERS with at least 50% of the projected employer contribution for the year by January 15th of any year, that entity is currently entitled to a 5.8% discount. This discount percent has varied over the past 10 years. The County chose for FY 2015-16, as it has done in prior years, to contribute the Actuarially Determined Contribution (ADC), (previously known as the Annual Required Contribution [ARC]) through the proceeds from the issuance of short term bonds (12-18 month maturities).

The most recent Pension Obligation Bond Issue, completed January 15, 2016, had a blended interest rate of approximately 1.13%, making the prepayment cost effective considering the 5.8% discount offered by OCERS. The 2016 bond issue and the early payment to OCERS generated a net budget savings of \$16.2 million to the County for FY 2016-2017. Table 2 reflects the net savings, by year, generated through the discount program for the past 10 years.

FY Prepaid	Year Issued	Discount	Net Budget Savings
2016-17	2016	5.80%	\$16,235,749
2015-16	2015	5.80%	\$17,917,713
2014-15	2014	7.25%	\$22,147,628
2013-14	2013	7.75%	\$20,026,078
2012-13	2012	7.75%	\$17,968,302
2011-12	2011	6.14%	\$16,443,160
2008-11	N/A		
2007-08	2007	7.75%	<u>\$6,148,971</u>

\$116,887,601

Source: Orange County Public Finance Department

Table 2. Ten Year History of Savings

OCERS and other pension systems allow participating government entities to make additional payments above the required contribution. Such additional payments would further reduce the unfunded pension liabilities. Several other jurisdictions within Orange County, including the Orange County Fire Authority, the City of Irvine, the City of Lake Forest, and the Orange

County Sanitation District have made such advance payments to their pension systems. The Orange County Cemetery District has now paid off their unfunded liabilities. The Board of Supervisors (BoS) has the same prerogative to make additional payments beyond the ADC. Had the BoS committed to this policy, the unfunded debt would not have reached the levels actually experienced.

Finally, in 2014, the Government Accounting Standards Board (GASB), which regulates the method of presenting governmental financial audits, issued new accounting standards (GASB website, 2015). These Standards require all units of government to disclose the dollar amount of the unfunded pension liability in their balance sheets, thus improving financial transparency at all levels of government.

The State of California recognized that local government retirement systems such as OCERS were facing financial stress, so the Legislature passed and the Governor signed the Public Employees’ Pension Reform Act of 2013 (PEPRA). The Act mandates reduced benefits for individuals hired after January 1, 2013 and should make OCERS and pension systems throughout the State financially stronger going forward.

As part of the annual Strategic Financial Plan, the County Budget Office provides a forecast that includes an estimate of the expected Actuarially Determined Contribution to OCERS in a line item titled “Retirement Costs,” as depicted in Table 3. The 2015 County’s Strategic Financial Plan projects the expected retirement costs for the next five years and includes an average of 1.3% annual increase, as depicted in Table 3. It is also worth noting that of the 37 priority goals listed in the County’s 2015-16 Strategic Financial Plan, reducing the unfunded pension liability is not one of them.

Projected Retirement Costs				
FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
\$387m	\$406m	\$418m	\$425m	\$432m

Source: 2015 Orange County Strategic Financial Plan.
Excludes Pension Prepayment & Retirees Medical Plans.

Table 3. Forecasted Actuarially Determined Contribution

SCOPE OF REPORT

As referenced previously, the 2013-2014 Grand Jury report documented the Unfunded Actuarial Accrued Liability (UAAL or unfunded pension liability) at the cities level in Orange County but

did not assess the UAAL at the County level. The 2015-2016 Grand Jury identified this opportunity to review how the County is dealing with the issue of pension liabilities and other elements of the County's retirement plans that the public might have an interest in knowing.

METHODOLOGY

In researching the unfunded pension liabilities of the County, the Grand Jury interviewed numerous individuals in senior and executive management positions and reviewed many documents and financial reports as identified below:

- Senior management of Orange County Employee Retirement System (OCERS)
- Senior management of Orange County government
- Board Member of OCERS
- Senior management of Orange County Employees Association (OCEA)
- Board Member of OCEA
- California Legislative Analyst Office
- Senior management of League of California Cities
- Literature reviewed as listed in "Works Consulted"

INVESTIGATION AND ANALYSIS

The magnitude and influence of Orange County is not easily understood by its residents. The County is one of the major metropolitan areas in the State and nation. The County's population of over 3 million inhabitants is larger by population than 80 countries and 21 U.S. states. Orange County is the third most populous county in California and ranks sixth in the nation. It occupies 789 square miles with a coastline of 42 miles. As shown in Table 4, Orange County government is the third largest employer.

Employer	Number of Employees
Walt Disney Company	27,000
University of California, Irvine	22,385
County of Orange	18,135
St. Joseph Health System	12,227
Kaiser Permanente	7,000
Boeing Company	6,890
Wal-Mart Stores, Inc.	6,000
Memorial Care Health System	5,650
Bank of America	5,500
Target	5,400

Source: 2016 Official Statement w/Pension Obligation Bonds.

Table 4. County of Orange Top Ten Employers

Orange County’s FY 2015-2016 operating budget approaches \$6 billion. The County government is comparable to a major corporation in size and complexity, and the annual budget is equivalent to the entire annual budget for the State of Mississippi (Wikipedia 2015). Given these comparisons, the size of the County’s unfunded pension liabilities are not the overwhelming amounts that initially concerned the Grand Jury. Nevertheless, the County’s level of funded pension liabilities is still too low compared to its peer governments as evidenced in Table 1.

Pension System

Pension administration and investment management for Orange County employees is provided, in the main, through the Orange County Employees Retirement System (OCERS) which was approved by the voters and the County Board of Supervisors in 1945 pursuant to a California State law passed in 1937. Orange County government represents approximately 80% of OCERS assets and member employees. The 20% balance of assets represents other public jurisdictions that have elected to have their pension funds managed by OCERS.

Shortly after the Orange County bankruptcy in 1994, OCERS, previously a department of the County government became independent from County government. At the time, there was concern that County officials might want to invade OCERS funds to assist in satisfying other

County obligations in dealing with the bankruptcy (OCERS).

OCERS is headquartered in Santa Ana and has a staff of 73. As of December 31, 2015, OCERS managed slightly over \$12 billion dollars in pension funds on behalf of its beneficiaries (i.e., current and future retirees) (OCERS, April 2016). OCERS is governed by a ten member Board of Retirement (OCERS Board), bound by the County Employees' 1937 Retirement Law. Of the ten members, four are appointed by the Orange County Board of Supervisors, four (including the Public Safety alternate) are elected by OCERS' active (still employed) members, and one is elected by the retired membership. The County Treasurer serves as an ex-officio member. Board members serve three-year terms, with the exception of the County Treasurer, who serves for his or her tenure in office (OCERS, 2015).

There are a variety of formulas that determine an employee's pension benefit including the employee's date of hire, and job classification as either a public safety employee or a general employee. Annually OCERS provides the Actuarially Determined Contribution to its participating 15 governments, including Orange County, to use in budgeting for the upcoming year.

Types of Pension Plans

There are two primary forms of retirement plans in this country: defined benefit and defined contribution. Although the defined benefit plan through OCERS historically has been the main retirement plan available to County employees and elected officials, the Grand Jury discovered the County has other, additional retirement plans which are discussed later in this report.

Defined Benefit Plan

The OCERS managed retirement plan is a Defined Benefit Plan in which the employee's contribution and the monthly retirement benefit is based on a formula of years of service and final compensation. Regardless of how much the employee actually invested in the fund, the benefit continues until the death of the employee and/or the employee's surviving beneficiary. This monthly amount is adjusted for inflation as determined by the OCERS Board. See Appendix C for a further description of Defined Benefit.

OCERS Board manages the retirement funds and is responsible for adopting numerous “assumptions,” or projections, including: investment rate of return, inflation rate, cost of living adjustments (set by State law), projected general county employees and safety employees wage increases and mortality. These assumptions are reviewed annually and approved triennially by the OCERS Board. The County Staff and OCERS Staff then provide data to OCERS’ private actuary firm. The actuary uses the data to develop the annual Actuarially Determined Contribution (ADC). Table 5 shows the past five years of the ADC amounts.

Actuarially Determined Contribution	
Fiscal Year	\$ in millions
2012-13	267
2013-14	320
2014-15	372
2015-16	384
2016-17	387

Source: Orange County Public Finance Dept.

Table 5. Five Year Actuarially Determined Contributions

The County again took advantage of the OCERS 5.8% discount by issuing 2016 Pension Obligation Bonds in the amount of \$334 million to fund the 2016 ADC payment. In order to size the bond issue, County departments have a choice of participating in the bond issue or using cash on hand within the department. A few County departments use their cash on hand which is deducted from the ADC.

In 2012 the OCERS Board reduced the amortization period from 30 years to 20 years. This decision requires the County to make a higher annual contribution, but reduces the unfunded pension liability more quickly.

Likewise, in the same year, the OCERS Board made a decision to lower its expected annual investment return from 7.75% to a more realistic 7.25%. There have been many years in the past when OCERS did not achieve its projected investment return. In fact, OCERS did not achieve its investment target one third of the time since 1986 as illustrated in Figure 1.

The OCERS Board made the decisions to reduce the amortization schedule and lower its expected annual investment return based on input and recommendations from its independent actuary firm and other sources.

Defined Contribution Plan

Gaining in political support, but not necessarily gaining popularity with County employees, the primary alternative pension plan that the County could adopt is a Defined Contribution Plan. In a Defined Contribution Plan, the employee funds the account through a deduction from salary and the funds are invested at the direction of the employee from the plan's investment alternatives. The employer has the discretion of making a contribution on behalf of the employee to the individual's retirement account. At retirement, the dollar value of the employee's retirement funds are distributed at the direction of the employee, much like a "401 K" plan used in most private sector companies. Pension payments cease when the fund is exhausted. See Appendix C for a further description.

Defined Contribution Plans have been growing in the private sector, as they are less expensive to the employer and have predictable, fixed pension costs, while the defined benefit plans are a variable cost.

OCERS brought to the Grand Jury's attention the fact that three state governments have converted their Defined Benefit Plans into a Defined Contribution Plans: Michigan in 1997, Alaska in 2006 and Oklahoma in 2015. Conversely, three cities with Defined Contribution Plans have reverted to Defined Benefit Plans based on financial pressure from both the employees and the employers: New London, CT, Davie, FL and Alexandria, VA.

Other Retirement Plans in Orange County Government

In addition to the defined benefit retirement plan managed by the OCERS Board, there also exist other, smaller, additional restricted retirement plans inside the County. These are Defined Contribution Plans and are administered by the County Human Resources Department rather than OCERS.

401(a) Executive and Elected Officials Retirement Plan

This Plan was adopted in 1999, years after OCERS became independent. The Plan is available to elected officials, Executive Management Groups 1, 2, 3 and eight non-County employees (including selected OCERS management), as depicted in Appendix D. These individuals are automatically enrolled in this 401(a) Defined Contribution Plan. According to interviews, this Plan was adopted to maintain competitive compensation packages for executive leadership and management staff from other public agencies or from the private sector. Appendix D also shows the County's contribution to the participants' retirement accounts. There is no matching contribution required by the employee, the elected officials, or the non-County employees.

On February 23, 2016 the Board of Supervisors granted a 2.75% raise to County Executives in Groups 2 and 3, shown in Appendix D, and to Executive Aides/Assistants. Based on the pay ranges County Executives may receive compensation up to \$252,000. The result is that in addition to a \$7,000 raise, Executives at the top level will receive an additional contribution into their 401(a) Plan.

Currently there are 642 employed or retired participants in this Plan, which has \$13.6 million in assets as of February 2016. This retirement benefit is in addition to the OCERS Defined Benefit Plan for these select individuals.

457 Defined Contribution Program

The County offers all full-time and part-time employees the ability to enroll in a Defined Contribution Program administered through a private company.

The 457 Defined Contribution Program is a voluntary retirement savings program that allows the employee to contribute a portion of their bi-weekly salary on a pre-tax basis. All of the savings grow tax-free until the employee removes money from the account at retirement or separation of employment. The Program offers a wide variety of professionally managed investment options. The employee can choose from among a diverse array of investment options.

1.62%@65 Hybrid Plan

Employees enrolled in the "1.62 at 65" retirement benefit (OCERS) formula are eligible to enroll in the 1.62 Hybrid Plan. The 1.62 Plan combines a traditional defined benefit plan pension with a defined contribution component so they can work together to help achieve an adequate and

secure retirement. The 1.62 Hybrid Plan includes a voluntary retirement savings program that allows an employee to contribute a portion of their bi-weekly salary on a pre-tax basis, currently up to \$18,000 per year, and receive employer matching contributions to the Plan, up to 2% of base salary per pay period.

Employee contributions are made on a pre-tax basis and go into a 457 account. Employee contributions vest immediately on behalf of the employee. The employer matching contributions go into a 401(a) account for the employee to manage. Employer contributions vest on behalf of the employee after five (5) years of continuous employment with the County. Employees may choose from among an array of investment options.

Extra Help 3121 Plan

The 3121 Plan is the only retirement plan available to employees who work for the County and are classified as Extra Help. This Defined Contribution Plan is also known as 3121 FICA Alternative Compensation Plan. This Plan was adopted in 2002 to comply with a federal IRS code since the County does not participate in the Federal Social Security system. Extra Help employees are automatically enrolled and 7.5% of their base salary is contributed to the Plan. There are 3,690 participants in the Plan with \$7.3 million in assets as of February 2016. Prior to this Plan, Extra Help employees contributed to a 1992 Defined Benefit Plan but it has been closed to new employees since 1992 and is “winding down” as participants pass away.

Advisory Committee

The County has established a Defined Contribution Advisory Committee (Committee) which meets at least quarterly. With the assistance of the County's independent investment consultant, the Committee evaluates and monitors the various defined contribution plans, the investments, services, assets and market trends. The Committee recommends action on items such as changing investment alternatives choices for the participants. When modifications in services are proposed they are submitted to the County's Chief Financial Officer for approval. The County's Chief Financial Officer is the fiduciary for the Plans.

Improved Disclosure/Transparency

The Government Accounting Standards Board (GASB) is the independent organization that establishes and improves standards of accounting and financial reporting for U.S. state and local governments. Established in 1984 by agreement of the Financial Accounting Foundation and 10 national associations of state and local government officials, GASB is recognized by government, the accounting industry, and capital markets as the official source of generally accepted accounting principles (GAAP) for state and local governments.

In 2014 GASB issued two related statements (rules) that substantially changed the accounting and financial reporting of pension liability. GASB Statements No. 67 requires more extensive reporting by pension plan administrators, like OCERS. Statement 67 establishes a definition of a pension plan that reflects the primary activities associated with the pension arrangement—determining pensions, accumulating and managing assets dedicated for pensions, and paying benefits to plan members as they come due.

Statement 68 requires the County, and all other public jurisdictions to report their unfunded pension liabilities in their balance sheets as a line item. The 2014-15 Orange County audit is the first time unfunded pension liability was presented in this manner. Prior to the new rules, each government employer's liability was simply considered to be the amount that the employer was contributing toward the Defined Benefit Plan(s) on an annual basis.

For government financial reporting, GASB now requires that the Net Pension Liability (this amount is similar to what was previously referred to as the Unfunded Pension Liability) be presented using “market value” instead of “actuarially smoothed value” of assets on the balance sheet. Market value means using market quotes at year-end for all invested assets, rather than the previously used actuarial projections. The benefit of the current method of reporting is that unfunded liabilities all are more transparent and understandable than in the past for all units of government, nationally.

State Legislation

As public awareness of unfunded pension liabilities at the local level was developing, during the past decade, there was also growing awareness that the State of California government was experiencing the same problem of growing pension liabilities. The primary pension system for State government employees is the California Public Employee Retirement System (CALPERS).

CALPERS disclosed in its 2014 annual financial report that its unfunded pension liabilities rose from \$27.5 billion in 2004 to \$113.4 billion in 2013. As a result of this increase, the State Legislature was sufficiently concerned with the retirement benefits and liabilities that it passed the Public Employees' Pension Reform Act of 2013 (PEPRA). PEPRA applies to most new hires in local government. Existing employees are referred to as classic employees.

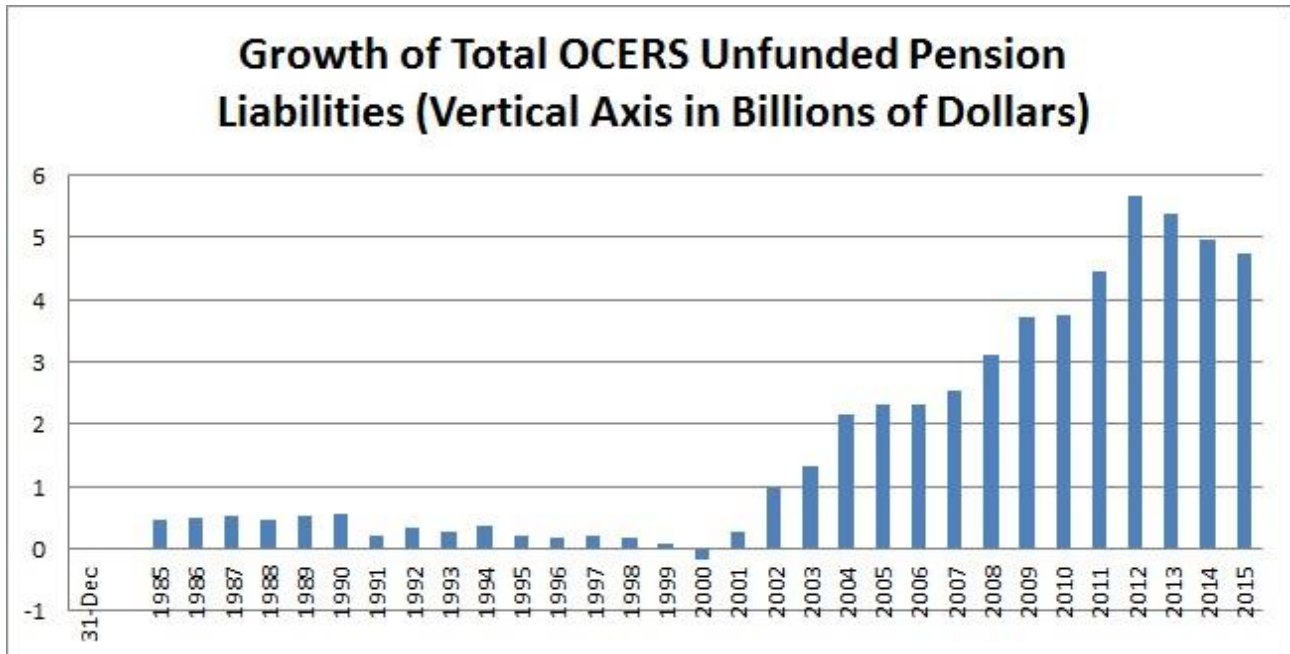
There are various reforms in the PEPRA law. Among them is a cap on pensionable compensation for the purpose of calculating retirement benefit. In 2015 the cap was \$117,020 for individuals who participate in Social Security and \$140,424 for those who do not. Both limits are subject to increases in the Consumer Price Index. Additionally, new hires are now required to pay at least 50% of the "normal cost" of their retirement benefits. "Normal cost" means the amount that it will cost to pay for future benefits. The following is excerpted from a summary of the law on the CALPERS website:

- Creates a new defined benefit formula of 2% at age 62 for all new miscellaneous (non-safety) members with an early retirement of 52 and a maximum benefit factor of 2.5% at age 67. The County's 1.62% at age 65 benefit formula is considered PEPRA compliant and continues to be offered to most employees with a few exceptions, as well as to the Sheriff's Special Officers (general members) whose only option is the 2.5% at age 67.
- Creates a new defined benefit formula of 2.7% at age 57 for all new safety members with an early retirement of 2% at age 50.
- Other areas affected by the law include:
 - Revised Definition of "New Members";
 - Pensionable Compensation Cap;
 - Equal Sharing of Normal Cost;
 - Prohibits Retroactive Pension Benefit Enhancements;
 - Prohibits Pension Holidays; and
 - Pensionable Compensation.

History and Forecast of Unfunded Pension Liability

Figures 3 and 4 create a mental disconnect from the current declining unfunded pension liabilities. Figure 3 illustrates OCERS' unfunded pension liabilities history and the dramatic rise in the unfunded liability up to 2012 with a modest decline commencing in 2013. Orange County,

as a participant in OCERS, is estimated to be 80% of each of the bars with a liability of \$4.5 billion in 2012.



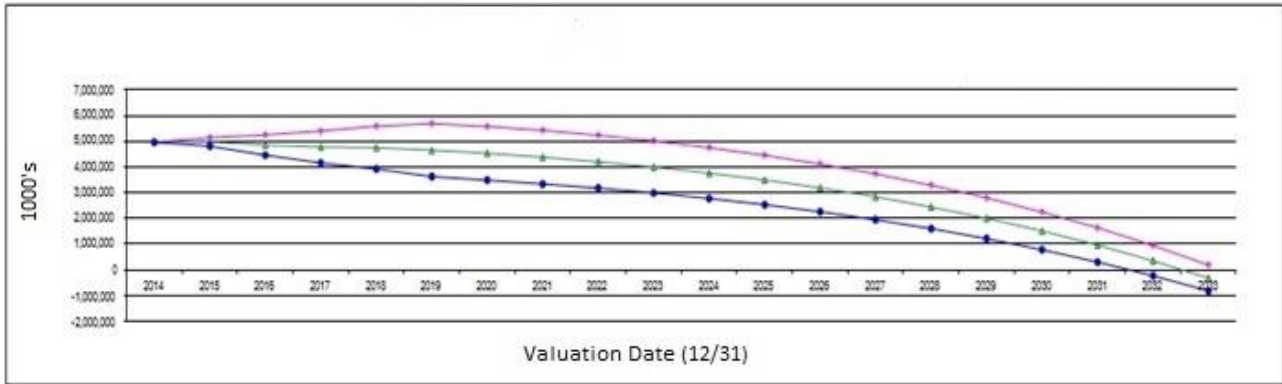
Source: The Evolution of OCERS Unfunded Actuarial Accrued Liability, December 31, 2014

NOTE: Orange County government represents approximately 80% of each bar. The other 20% are other public jurisdictions such as the City of San Juan Capistrano, Orange County Transportation District and 12 other entities.

Figure 3. Unfunded Pension Liabilities

Figure 4 is a forecast by OCERS’ independent actuary showing that all its participating governments can expect 4-5 years of increasing unfunded liabilities. It illustrates three possible results for future unfunded liabilities. The chart uses three different investment return rate assumptions:

- RED (top line) 0.00% rate of return in 2015 and 7.25% return each year thereafter
- GREEN (center line) 7.25% rate of return in 2015 and 7.25% return each year thereafter
- BLUE (bottom line) 14.5% rate of return in 2015 and 7.25% return each year thereafter



(Prepared by OCERS Independent Actuary-July 2015)

Figure 4. Illustrative Projection of OCERS Unfunded Pension Liabilities

Unaudited year end 2015 results of OCERS' investment returns, when mapped on the chart, most closely approximate the top red line. Based on that result, the illustration suggests that Orange County's unfunded liability will rise 8.4% (\$438 million) over the next 4 years and then begin a steady decline ending with 100% funded in 2033. As unfunded liabilities grow, County budget officials will have to reduce funding to existing programs and services or raise revenue. With a much improved economy the Grand Jury hopes the actuarial projection is wrong and liabilities will continue to shrink. (The projections were prepared by OCERS Independent Actuary. The illustrations are not a guarantee of the actual outcome.)

Conclusion

Through the process of conducting personal interviews, reviewing numerous financial documents, and comparing data from other large California governmental entities, the Grand Jury concludes that Orange County is taking adequate, but not aggressive action to reduce the unfunded liability and therefore, is adversely affecting the level of service to the public that it could provide if the liability was eliminated. There is a distinct disconnect between the reductions of the unfunded pension liability in recent years and the actuarial projection of the pension liabilities increasing for the next several years by nearly \$500 million.

FINDINGS

In accordance with California Penal Code §933 and §933.05, the 2015-2016 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.

2016 Orange County Grand Jury has arrived at nine principal findings, as follows:

- F.1.** The County, in part, is responsible for the unfunded pension liabilities to increase from a surplus of \$130,000 in 2000 to \$4.5 billion as of December 2012. This represents an increase of more than 4,500% since year 2000.
- F.2.** The County should have developed a plan to curb the growth in unfunded pension liability independent of OCERS.
- F.3.** The County and OCERS have taken recent actions to control and slightly reduce the unfunded liabilities by 11% from \$4.5 billion in 2012 to \$3.8 billion in 2015, but the County could be more aggressive.
- F.4.** Issuing short term Pension Obligation Bonds (7 of past 10 years) to achieve taxpayer's savings of over \$100 million during the past decade was a good decision by the County.
- F.5.** OCERS Board of Retirement made a solid financial decision to reduce the amortization period of the UAAL from 30 years down to its current period of 20 years, resulting in increased annual payments from the County.
- F.6.** Passage of the state Public Employees' Pension Reform Act of 2013 should improve the financial stability of the County's retirement system.
- F.7.** The State and local governments have the ability to implement Defined Contribution Plans, or hybrid plans, instead of the traditional Defined Benefit Plan. Much of the private sector has transitioned to the Defined Contribution Plans such as 401K plans and more than 30 jurisdictions in California use Defined Contribution Retirement Plans, including Orange County.
- F.8.** County employees are not treated equally as relates to retirement benefits. Orange County utilizes and contributes to several Defined Contribution Plans as supplemental retirement

plans to OCERS and one of the plans is restricted to “select” employees and all elected County officials. Additionally, the County has eight non-County employees in the exclusive 401(a) plan.

- F.9.** Orange County has not designated unfunded liability reduction as a priority either by action or in its Strategic Financial Plan.

RECOMMENDATIONS

In accordance with California Penal Code §933 and §933.05, the 2015-2016 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’s \$4.5 Billion Unfunded Pension Liability & Retirement Plans”, the 2015-2016 Orange County Grand Jury makes the following seven recommendations:

- R.1.** The County should encourage the OCERS Board of Retirement to maintain financially sound assumptions and to oppose any relaxation of current assumptions. (F1)(F3)
- R.2.** The County should establish and adopt a plan, working with OCERS, to increase the pension percent funded liability to 80% from its current level of 70% by making additional payments to OCERS. This plan should be developed as part of the County Strategic Financial Plan is being updated in late summer 2016. As the 2017-2018 budget is being developed, the first advance payment of the Plan should be included. (F1) (F2)
- R.3.** The County should develop a policy to continue issuing short term Pension Obligation Bonds, so long as the discount from OCERS is available and there is enough net savings (which should be defined) after paying for cost of issuance and underwriter’s discount. (F4)
- R.4.** The County should direct its lobbyists or work through the California State Association to find support in the legislature for a bill with additional pension reforms, beginning with the next legislative session that would further reduce the impact of unfunded pension liabilities. (F6)
- R.5.** The County should conduct a thorough analysis including the financial impact of implementing a Defined Contribution Retirement Plan or a hybrid plan, replacing the current Defined Benefit Plan, before January 2017. (F1) (F7)

- R.6.** The County should review the current practice of using taxpayer money to benefit eight non-County employees through the 401(a) retirement plan by the end of 2016. (Executive Director LAFCO; Executive Manager- Children & Family Commission and six OCERS executives). (F8)
- R.7.** The Board of Supervisors should, by the end of calendar year 2016, publicly revisit and determine if the Executive Compensation package 401(a) supplemental retirement plan for 44 County elected officials and top executives is still justifiable. (F8)

REQUIRED RESPONSES

The California Penal Code §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 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 following governing body within 90 days of the date of the publication of this report:

The County of Orange Board of Supervisors:

90 Day Required Responses:	F1	F2	F3	F4	F5	F6	F7	F8	F9
Orange County Board of Supervisors	X	X	X	X	X	X	X	X	X

90 Day Required Responses:	R1	R2	R3	R4	R5	R6	R7
Orange County Board of Supervisors	X	X	X	X	X	X	X

Responses Requested:

Orange County’s \$4.5 Billion Unfunded Pension Liability & Retirement Plans

Responses are requested from the following non-elected agency or department head:

Requested Responses:	F1	F2	F3	F4	F5	F6	F7	F8	F9
OC Employees Retirement System			X		X	X	X		

Requested Responses:	R1	R2	R3	R4	R5	R6	R7
OC Employees Retirement System	X	X	X			X	X

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APPENDICES

Appendix A Acronyms

ARC	Annual Required Contribution
ADC	Actuarially Determined Contribution
COLA	Cost of Living Adjustment
CAFR	Comprehensive Annual Financial Report
GASB	Governmental Accounting Standards Board
GFOA	Governmental Finance Officers Association
OCEA	Orange County Employee Association
OCERS	Orange County Employees Retirement System
OC	Orange County, California
OCSD	Orange County Sheriff/Coroner's Department
PEPRA	Public Employees' Pension Reform Act
UAAL	Unfunded Actuarial Accrued Liability

Appendix B Glossary

Actuarial Gain (Loss) - A measure of the difference between actuarial and expected experience based upon a set of actuarial assumptions. Examples include higher than expected salaries increases (loss) and a higher return on fund assets than anticipated (gain).

Amortization - (1) The portion of the cost of a limited-life or intangible asset charged as an expense during a particular period. (2) The reduction of debt by regular payments of principal and interest sufficient to retire the debt by maturity.

Auditor's Report - In the context of a financial audit, a statement by the auditor describing the scope of the audit and the auditing standards applied in the examination, and setting forth the auditor's opinion on the fairness of presentation of the financial information in conformity with generally accepted accounting principles (GAAP) or some other comprehensive basis of accounting.

Comprehensive Annual Financial Report (CAFR) – CAFR is the official annual financial report of a government. It includes the basic financial statements and their related notes prepared in conformity with GAAP. It also includes supporting schedules necessary to demonstrate compliance with finance-related legal and contractual provisions, required supplementary information, extensive introductory material and a detailed statistical section.

Defined Benefit Pension – Determined by a set formula, rather than depending on investment returns. An employee's pension payment is typically calculated based on length of service and salary earned and often contains provisions periodic for cost of living adjustments.

Defined Contribution Pension – Does not commit a specific amount of benefits at retirement. Employers and/or employees contribute to the employee's retirement account up to annually defined limits.

Normal Cost - The ongoing annual cost allocated to the system by a particular actuarial cost method for providing benefits (future cost). Normal cost payments are made during the working lifetime of the member.

Pension - A regular payment made during a person's retirement from an investment fund to which that person or their employer or both have contributed during their working life.

Pension Contribution - The amount paid into a pension plan by an employer and/or employee, pursuant to the terms of the plan, state law, actuarial calculations or some other basis for determinations.

Pension Trust Fund - A fund used to account for public employee retirement benefits. Pension trust funds, like nonexpendable trust funds, use the accrual basis of accounting and have a capital maintenance focus.

UAAL Amortization Payment - The portion of pension contributions designed to pay off (amortize) the unfunded actuarial accrued liability in a systematic fashion. Equivalently, it is a series of periodic payments required to pay off a debt.

Unfunded Actuarial Accrued Liability (UAAL) - The excess of the actuarial accrued liability over the actuarial value of assets conformity with GAAP.

Appendix C Basic Forms Pension Plans

Defined benefit plans

A defined benefit plan is a plan in which an employee's benefit on retirement is determined by a set formula, rather than depending on investment returns on that employee's savings.

Traditionally, retirement plans have been administered by institutions which exist specifically for that purpose. A typical form of a defined benefit plan is the final salary plan, under which the pension paid is equal to the number of years worked, multiplied by a percentage of the member's salary at retirement usually adjusted for inflation. Normally a minimum number of years worked and/or a minimum retirement age are specified.

The employer's cost of a defined benefit plan is not easily predicted since it depends so much on the plan's ability to achieve the predicted rate of return on investment of the plan's assets as they are accrued. Since the pension benefit to the employee is defined, any shortfall in investment returns or longer than actuarially predicted employee life span post retirement for example must be made up by the employer. The employer assumes all the risk in providing the defined benefit.

Defined contribution plans

In a defined contribution plan, contributions are paid into an individual account for each member. The contributions are invested, for example in the stock market, and the returns on the investment (which may be positive or negative) credited to the individual's account. During retirement, the member's account is used to provide retirement benefits, sometimes through the purchase of an annuity which then provides a regular income. Defined contribution plans have become widespread all over the world in recent years, and are now the dominant form of plan in the private sector in many countries.

In a defined contribution plan, investment risk and investment rewards are assumed by each individual/employee/retiree and not by the plan sponsor or the employer, and these risks may be substantial. In addition, participants do not necessarily purchase annuities with their savings upon retirement, and bear the risk of outliving their assets.

Despite the fact that the participant in a defined contribution plan typically has control over investment decisions, the plan sponsor retains a significant degree of fiduciary responsibility

over investment of plan assets, including the selection of investment options and administrative providers.

Appendix D 401(a) Exec & Elected Officials Retirement Plan County Contributions

Groups with contributions in 401(a)	Job Titles	Contribution Percentages
Executive Management Group 1	Member, Board of Supervisors	8%
	Treasurer-Tax Collector	
	Sheriff-Coroner	
	County Clerk/Recorder	
	Assessor	
	District Attorney	
	Auditor-Controller	
Executive Management Group 2	Chief Financial Officer	5%
	Human Resources Director	
	Chief Executive Officer (OCERS)*	
	Deputy County Executive Officer	
	Director Child Support Services	
	Director OC Community Resources	
	Director Dana Point Harbor	
	Registrar of Voters	
	County Executive Officer	
	Chief Information Officer	
	County Counsel	
	Public Defender	
	Director Health Care Agency	
	Airport Director	
	Director Social Services Agency	
	County Probation Officer	
Director of Public Works		
Clerk of the Board of Supervisors		
Director OC Waste & Recycling		
Executive Management Group 3	Assistant CEO of External Operations (OCERS)*	4%
	Assistant CEO of Finance (OCERS)*	
	Assistant Sheriff	
	Assistant Treasurer-Tax Collector	
	Chief Bureau of Investigations, DA	
	Chief Deputy Probation Officer	
	Chief Investment Officer (OCERS)*	
	Chief Legal Officer (OCERS)*	
	Commander	
	County Librarian	
	Director/Chief Engineering	
	Director of Investment Operations (OCERS)*	
	Director of Mental Health	
	Director of Public Health	
Executive Manager		
UnderSheriff		
Other: Non-County Employees	Executive Manager (Children & Families Commission)	3%
	Executive Officer (LAFCO)*	

* The County administers benefits for Courts, OCERS and several Special Districts (these are non-County employees) through Memorandums of Understandings (MOUs)

REPORT
9

**DEALING WITH ASBESTOS IN
ORANGE COUNTY PUBLIC
SCHOOLS**



GRAND JURY 2015-2016

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<https://en.wikipedia.org/wiki/Asbestos>, Web 13 June 2016.

Figure 2. Asbestos Fibers (Scanning Electron Microscope)

<https://en.wikipedia.org/wiki/Asbestos>, Web 13 June 2016.

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EXECUTIVE SUMMARY

Over two-thirds of Orange County's nearly 600 K-12 public schools have encapsulated asbestos present in one or more of the buildings on their school campuses. Orange County's school districts are of widely varying sizes and have facilities of varying ages. However, the presence of encapsulated asbestos is not limited to a few larger and older school districts; all but one of the twenty-eight Orange County school districts have asbestos present in at least one of their schools or administrative buildings.

The 1986 Asbestos Hazard Emergency Response Act (AHERA) established Federal regulations related to asbestos hazards applicable to all schools specifically including public, public charter, private non-profit, and religious schools. The Act was designed to assure that school districts maintain awareness of where asbestos is located in their schools and that if asbestos is present that it does not present an immediate hazard to students and staff. The Grand Jury found in its investigation of how Orange County school districts deal with asbestos that all districts are diligent in meeting the key AHERA requirements, but that many fall short of full compliance with all relevant AHERA regulations.

Asbestos is a hazardous material that poses significant health risks when its microscopic fibers are not safely encapsulated or when normally safe asbestos-containing materials are disturbed. There is no established safe exposure level to breathing microscopic asbestos fibers. Asbestos fibers embedded in cement, asphalt, and vinyl materials are said to be "encapsulated" when they are firmly bound into materials in good condition. Such fibers typically will be released into the air only if the material is damaged mechanically, for example through drilling, cutting, grinding, or sanding, or through wear and tear of unprotected and exposed surfaces. Asbestos in roofing shingles and siding exposed to weathering may slowly deteriorate and has the potential to release fibers. An impermeable barrier that isolates any asbestos-containing material from an environment that people might occupy is an acceptable form of encapsulation.

The Grand Jury strongly cautions that current EPA standards provide the mere presence of encapsulated asbestos at a school site does not present any immediate danger to schoolchildren or staff at the site.

However, the presence of encapsulated asbestos does call for *continued awareness* of where the asbestos is located, for *extreme care to not disturb encapsulated asbestos* during modifications or repairs of a facility, and for *continued monitoring* for wear and tear of asbestos-containing materials. Districts must know how to inspect for, contract for, schedule, and manage removal (abatement) of asbestos and other hazardous materials prior to and during construction work.

Twenty-one Orange County school districts are embarking on modernization and repair construction efforts affecting existing facilities, the time of greatest risk of asbestos exposure from encapsulated asbestos present in those facilities. The scope of planned construction efforts in just three districts of these twenty-one districts is quite impressive. Measure H was approved in 2014 for a \$249 million bond for Anaheim Union High School District, Measure E was approved in 2016 for a \$319 million bond for Irvine Unified School District, and proposals are being prepared for up to \$889 million in bonds for Capistrano Unified School District. Most of the planned efforts funded by these bonds will be for modernization and repair of existing facilities, not new construction.

The Grand Jury in this report makes detailed recommendations to Orange County school districts to establish documented and transparent processes to comply fully with AHERA requirements, to establish disciplined contracting processes for safely removing asbestos and other hazardous materials, and to commit to plans to remove asbestos from all Orange County schools.

BACKGROUND

Scope of This Report

Safety of children is a concern of everyone in Orange County. Children spend the greatest amount of time away from their home and family in the schools they attend. The 2015-2016 Orange County Grand Jury conducted an investigation of Orange County public school safety issues related to the hazardous material asbestos. Public schools within the scope of this investigation were grades K-12, including public charter schools. Note that some school districts include preschool and pre-K classes, and these classroom facilities are also in the scope of this report. Private schools are not within the scope of this report, nor are private residences used for “home-schooling” or “on-line-learning”. The investigation examined implementation at the local school district levels of legal requirements for dealing with asbestos. The Grand Jury also looked at best practices for school districts for dealing with asbestos during facility modification, modernization, or repair, and for communicating with their parents, staff, and other community stakeholders on asbestos related activities.

Prior Orange County Grand Jury Reports on School Safety

Orange County Grand Juries have examined issues related to aspects of safety in public schools but none (going back to 1999) investigated potential hazardous materials in these schools. The three reports that did investigate safety in OC schools looked at the following topics:

- Bullying (“ANTI-BULLYING PROGRAMS IN ORANGE COUNTY SCHOOLS”)

- Emergency Preparedness (“Orange County Public Schools: Are they Prepared for Emergencies”)
- Disaster Planning (“ORANGE COUNTY SCHOOLS DISASTER PLANS”)

Reason for this Report’s Focus on Asbestos as a School Safety Issue

Student safety in schools involves an enormous range of potential topics for investigation such as bullying, the physical security of campus sites, earthquake and fire threats, and health related issues. The issue of how well Orange County schools are prepared to deal with asbestos-containing materials if present on their campuses came to the Grand Jury’s attention when problems with asbestos had a major impact on the Ocean View School District, as was extensively reported in local news stories in 2014-2015. The topic of hazardous materials covers much more than asbestos, as the Ocean View district learned when its asbestos remediation efforts had to be expanded to deal with the presence of lead and mold in the buildings where asbestos was being removed. Other hazardous materials that potentially might be found on school campuses include pesticides and other toxic chemicals.

Additional reasons the Grand Jury chose to narrow the focus of this school safety investigation to only asbestos include:

- The regulatory environment for asbestos is well established.
- The organizational allocation of authority and responsibility for dealing with asbestos in school districts will apply to other hazardous materials.
- The processes and best practices that should be in place to deal with asbestos will in general apply to school district processes for other hazardous materials.
- Remediation efforts for dealing with removal of any hazardous material all involve similar methodologies of inspection, record keeping, isolation of hazardous materials if they are found, movement of students and staff away from areas where hazardous materials are being removed, and protection for the workers doing the removal.
- Remediation of asbestos will almost always involve simultaneous remediation of other potential hazards such as lead, mold, and chemical contamination of soils and buildings.

Organizational Structure of Orange County School Districts

The size and complexity of public education in Orange County presents a challenge for Grand Jury investigations. Public education for grades K-12 in Orange County is an enormous enterprise serving over 500,000 students spread over a 782 square mile area. In addition to the Orange County Department of Education, there are 27 independently managed and financed school districts in the county. Total annual expenditures for these students exceed \$5.4 billion.

Over 23,000 teachers are responsible for these students’ education, supported by over 20,000 management/administrative/support staff (Orange County Schools at a Glance). Figures in this section and Appendix E of the report use data from the Orange County Department of Education (OCDE) and provide statistics on the number and types of Orange County schools (Directory 2015-2016) and on racial and ethnic diversity of students (Racial & Ethnic Survey 2012-2013).

The 27 independent school districts in Orange County are structured along three different models: elementary districts generally serving grades K-8 students, high school districts generally serving grades 9-12 students, and unified districts serving grades K-12 students. Table 1 shows how the 27 school districts are organized in these categories.

Table 1. Independent School District Organizational Structures

Elementary School Districts	12
Unified School Districts	12
High School Districts	3
Total	27

As shown in Table 2, these 27 districts plus the schools managed by the Department of Education comprise almost 600 schools. Each of these school campuses may have several buildings for education, with each building having multiple classrooms. In addition to classroom buildings, most campuses will have administrative/office buildings, laboratories, cafeterias and other food preparation and service areas, gyms, and maintenance buildings. All of these facilities fall within the purview of this report.

Table 2. Several Different School Types Comprise Each District

Elementary Schools	392
Junior High/Intermediate/Middle Schools	83
Senior High Schools	68
Continuation/Alternative/Special Education Schools	36
Charter Schools	19
Total	598

Table 3 shows the instructional grade distribution of the half-million Orange County K-12 student population.

Table 3. Student Population Distribution by Grades

K-8	336,502
9-12	163,985
Total	500,487

Orange County public schools serve a very diverse population of students in terms of racial and ethnic backgrounds. Twenty of the twenty-eight Orange County school districts are attended by more than 20% Hispanic students, and nearly half (13 of 28) are attended by more than 50 % Hispanic students. Nearly one-third (10 of 28 districts) of Orange County districts have greater than or equal to 20% Asian students. This diversity in the communities served can present difficulties in communication when dealing with potentially contentious topics related to hazardous materials. See Appendix E for more detailed information on the racial and ethnic diversity of the Orange County school population and for a more detailed breakout of that diversity by individual school district, which varies greatly from district to district.

What is Asbestos and Why is It a Hazard to Health?

Asbestos, its Mineralogy and Uses

Asbestos is a naturally occurring mineral, which is often in turn embedded in other minerals. Figure 1 shows one such asbestos-containing mineral, serpentine. (The ruler shown in the figure is one centimeter.) Ironically, as one person the Grand Jury interviewed pointed out, serpentine is the official state rock of California.

Asbestos has been used in thousands of products, largely because it is plentiful, readily available, cheap, strong, does not burn, conducts heat and electricity poorly, and is resistant to chemical corrosion. Some of the most common uses of asbestos containing materials include: fireproofing, insulation, and acoustical or soundproofing. Asbestos has also been added to asphalt, vinyl, cement and other materials to make products like roofing felts, exterior siding and roofing shingles, wallboard, pipes for water supply, combustion vents, and flues for waste gases and heat. Fibers in asbestos cement, asphalt, and vinyl materials are usually firmly bound into materials in good condition and typically will be released only if the material is damaged mechanically - for example through drilling, cutting, grinding, or sanding. In addition, asbestos in roofing shingles and siding exposed to weathering may slowly deteriorate and has the potential to release fibers. Appendix C provides an extensive overview of asbestos, its mineralogy, and its uses.



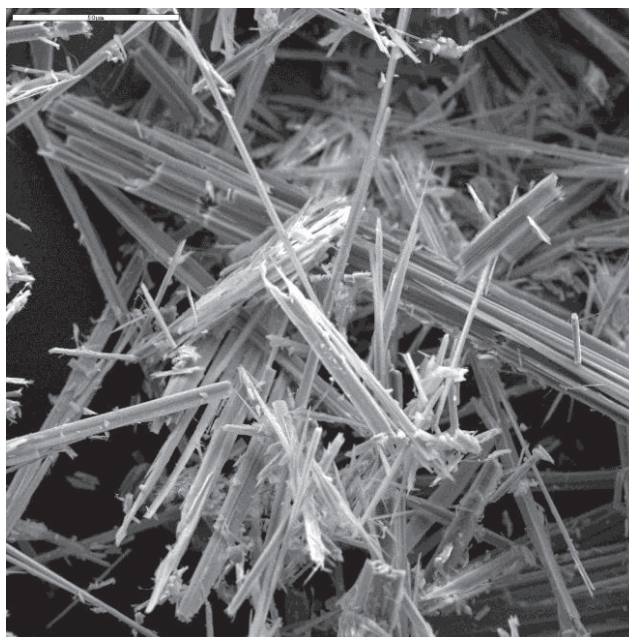
Source: Wikipedia

Figure 1. Serpentine (Crocidolite), a Mineral Source of Asbestos.

What are the Risks of Asbestos Exposure?

Unfortunately, despite its positive characteristics as a widely used material, asbestos is now well recognized as a health hazard, and its use is highly regulated by both the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA). Asbestos fibers associated with these health risks are roughly one tenth the width of a human hair and too small to be seen with the naked eye. Figure 2 below shows the microscopic needle-like asbestos fibers.

Multiple studies show that breathing in asbestos fibers leads to increased risk of developing several diseases. Asbestos-related diseases include asbestosis, lung cancer, mesothelioma, and other cancers. It is important to recognize that the majority of people who have developed diseases because of asbestos exposures are former asbestos workers exposed for long periods to breathing these fibers. The National Institute for Occupational Safety and Health (NIOSH) has determined, however, that there is no established safe level of exposure. Appendix D provides a more extensive discussion of the health risks associated with asbestos.



Source: Wikipedia

Figure 2. Asbestos Fibers (Scanning Electron Microscope)

The Regulatory Environment for Asbestos

The Federal Asbestos Hazard Emergency Response Act (AHERA) imposes regulations related to asbestos hazards on all public schools. Effective implementation of AHERA is the key to dealing with the potential hazards of asbestos in Orange County public schools. This is accomplished via written policies and procedures established by the County Department of Education and by the 27 independent school district boards and their District Superintendents' offices, training of personnel, and monitoring for compliance with these policies and procedures. The federal government does not delegate authority for dealing with AHERA compliance to individual states.

Enabling Federal Legislation

The Toxic Substances Control Act (TSCA) was enacted by the 94th United States Congress effective on October 11, 1976. TSCA is administered by the United States Environmental Protection Agency (EPA) to regulate the introduction of new or already existing chemicals. Title I of the original program establishes the core program, directs the EPA to control risks from polychlorinated biphenyls (PCBs), and bans certain activities with respect to elemental mercury. Title II of the TSCA, "Asbestos Hazard Emergency Response" was enacted by the US Congress in 1986. It authorizes the EPA to impose requirements for asbestos abatement in schools and requires accreditation of those who inspect for asbestos-containing materials.

Laws and Regulations

The EPA provides a web page with an excellent overview of the laws and regulations pertaining to asbestos implemented by the EPA and certain other federal agencies (Asbestos Laws and Regulations). Below is an extract from that overview, focusing on these laws and regulations as they apply to schools:

EPA Asbestos-Related Laws

The Asbestos Hazard Emergency Response Act (AHERA) (Toxic Substances Control Act (TSCA) Title II) required EPA to promulgate regulations (e.g., the Asbestos-Containing Materials in Schools Rule) requiring local educational agencies to inspect their school buildings for asbestos-containing building material, prepare asbestos management plans and perform asbestos response actions to prevent or reduce asbestos hazards. See Appendix F for a sample asbestos management plan (referred to as an AHERA report in this Grand Jury document) from one school in Orange County. AHERA also tasked EPA with developing a model plan for states for accrediting persons conducting asbestos inspection and corrective-action activities at schools.

The Asbestos School Hazard Abatement Reauthorization Act (ASHARA) extended funding for the asbestos abatement loan and grant program for schools. ASHARA also directed EPA to increase the number of training hours required for the training disciplines under the Asbestos Model Accreditation Plan (MAP) and to expand the accreditation requirements to cover asbestos abatement projects in all public and commercial buildings in addition to schools.

EPA Asbestos-Related Regulations

Asbestos-Containing Materials in Schools Rule (40 CFR Part 763, Subpart E): Pursuant to the Asbestos Hazard Emergency Response Act (AHERA), the Asbestos-Containing Materials in Schools rule requires local education agencies to inspect their school buildings for asbestos-containing building material, prepare asbestos management plans and perform asbestos response actions to prevent or reduce asbestos hazards. Public school districts and non-profit private schools, including charter schools and schools affiliated with religious institutions (collectively called local education agencies) are subject to the rule's requirements.

Occupational Safety and Health Administration (OSHA) Regulations

OSHA oversees the working conditions for U.S. workers by implementing and managing occupational safety and health standards. The following regulations pertain to handling asbestos in the workplace.

Asbestos General Standard—Specification of permissible exposure limits, engineering controls, worker training, labeling, respiratory protection, and disposal of asbestos waste.

Asbestos Construction Standard—Covers construction work involving asbestos, including work practices during demolition and renovation, worker training, disposal of asbestos waste, and specification of permissible exposure limits.

AHERA Requirements

On October 22, 1986, Congress promulgated the Asbestos Hazard Emergency Response Act (AHERA), Public Law 99-519. AHERA mandated that EPA develop regulations to respond to asbestos in schools. On October 30, 1987, EPA promulgated the Asbestos-Containing Materials in Schools Rule (referred to as the AHERA Rule), 40 CFR Part 763, Subpart E. This rule requires that all of the nation's nonprofit elementary and secondary schools, both public and private, inspect their school buildings for asbestos-containing-building-materials (ACBM), develop a plan to manage the asbestos for each school building, notify parents and staff regarding management plan availability, and provide asbestos awareness training to school maintenance and custodial workers.

The governing authority responsible for AHERA compliance is the Local Education Agency (LEA). "Local Education Agency" means either any local educational agency as defined in Section 198 of the Elementary and Secondary Education Act of 1965 (often called school district), the owner of any private, non-profit elementary or secondary school building, or the governing authority of any school operated under the Defense Department's education system.

Responsibilities of the AHERA Designated Person

A guide titled, "How to Manage Asbestos in School Buildings: The AHERA Designated Person's Self Study Guide" published January 1996 by the US EPA, Office of Prevention, Pesticides and Toxic Substances, contains a wealth of information on asbestos and the responsibilities of schools in dealing with it in its 93 pages (How to Manage Asbestos in Schools). One key responsibility called out is that the EPA requires schools to appoint an asbestos management coordinator, called the AHERA "Designated Person" to be responsible for a number of asbestos-related activities, including the implementation of the plan for managing asbestos-containing building materials (ACBM) in the school buildings and compliance with the federal asbestos regulations.

A more detailed list of the responsibilities of the AHERA Designated Person (DP) includes:

- Ensure that all activities of anyone who conducts the following are carried out in accordance with the AHERA requirements: conduct inspections, re-inspections, periodic

- surveillance; develops, implements and updates management plans; and plans and implements asbestos-related activities (such as maintenance or removal);
- Ensure that all custodial and maintenance employees are properly trained;
- Ensure that all workers, building occupants, students, and their parents are notified annually about management plan availability and recent and upcoming asbestos-related activities;
- Ensure that short-term workers who may come into contact with asbestos are provided information regarding the location of this asbestos;
- Ensure that all warning labels are posted; and
- Ensure that any conflicts of interest that may arise when selecting accredited personnel to conduct asbestos-related activities are considered.

Designated Person Training

AHERA requires that the DP be adequately trained to carry out his or her responsibilities. Due to the differing needs of school districts based on the size of the district and the amount and condition of the ACBM, AHERA does not list a specific training course or specific number of hours of training for the DP. Further, AHERA does not require the DP to be accredited.

However, the regulations require that the training specifically include the following topics:

- Health effects of asbestos;
- Detection, identification and assessment of asbestos-containing building materials (ACBM);
- Options for controlling asbestos-containing building materials;
- Asbestos management programs; and
- Relevant Federal and State regulations concerning asbestos, including AHERA and its implementing regulations and the regulations of the Occupational Safety and Health Administration, the U.S. Department of Transportation, and the U.S. Environmental Protection Agency.

METHODOLOGY

The Orange County Grand Jury began its investigation by interviewing school board members, parents, and management staff from the Superintendent's office of the Ocean View School District.

Using the lessons learned from these interviews, the Grand Jury then interviewed senior staff of the Orange County Department of Education and a selected set of other OC school districts chosen to provide a cross section of district size, location in the county, and type of district (elementary, high school, unified). Those interviews examined AHERA implementation by those

districts and identified best practices developed by some of the districts for dealing with the asbestos toxic hazard.

Given the large number of school districts in Orange County, the Grand Jury was not able to formally interview representatives of every district. In order to have complete statistical data from all districts, the Grand Jury developed a set of survey questions based on what it learned in its preliminary interviews and from its analysis of applicable EPA AHERA regulations. The Grand Jury sent the survey to all 28 Orange County school districts and was pleased to receive completed surveys from all the districts.

The Grand Jury investigation used several additional sources of information including:

- News media research
- Review of professional and government publications on hazardous materials
- Review of existing asbestos/lead/mold monitoring and control regulations at the federal, state, and local levels
- Review of prior grand jury reports related to school safety, school board responses to those reports, and review of the current implementation of school board safety policies and procedures
- Interview with a representative of a parent teacher association on concerns with hazardous materials at their schools
- Review of hazardous materials inspection reports for timeliness and completeness and for problems found and evidence of remediation
- Review of Asbestos Hazard Emergency Response Act

INVESTIGATION AND ANALYSIS

The Grand Jury looked at many aspects of hazardous materials in public schools starting with gaining an understanding of which materials represent risks to students and school employees. The Grand Jury also reviewed the legal restrictions on the use of potentially hazardous materials and regulations for the proper means to inspect for their presence and for remediation if hazardous materials are found. The Grand Jury conducted interviews with the stakeholders in one school district which had highly publicized issues with asbestos and identified lessons learned and ideas for avoiding a repetition of the problems in other Orange County school districts.

Asbestos-related News Articles Involving Orange County Schools

The asbestos problems that the Ocean View School District dealt with over the last two years were widely reported and led to the original Grand Jury interest in this topic. However, the Grand Jury discovered in its research for this report that other Orange County schools have had asbestos related issues that were also the subjects of local press coverage, just

not reported on as extensively. Asbestos-related issues in Orange County schools periodically come into public awareness and are apparently then forgotten. The experiences of two Orange County school districts with asbestos issues are briefly described below:

- Fullerton Joint Union High School District - Staff and parents at Troy and La Habra high schools were greatly concerned that health and safety may have been compromised by construction contractors during the school modernization process in 1997, 1999 and 2005. Significant, unanticipated asbestos abatement work was necessary at Sonora, Fullerton Union, Troy and La Habra high schools (Firms Sought).
- Brea Olinda Unified School District - Damage from a March 2014 earthquake allowed previously safely encapsulated asbestos at Fanning Elementary School to drift down from ceilings into classrooms and other school areas. Second through sixth grade students were relocated temporarily to Laurel Elementary School while extensive asbestos abatement work was performed (Fanning Elementary).

The Ocean View School District Experience with Asbestos

Extensive press coverage beginning in 2014 on the impact of asbestos related issues on the Ocean View School District led to the initial Grand Jury interest in this topic. The Ocean View School District serves the Orange County communities of Fountain Valley, Huntington Beach, Midway City, Westminster, and Seal Beach. This section of the report provides the timeline of events that occurred in the Ocean View district as that district responded to the discovery of asbestos in three of its schools during its eleven-campus modernization project. The consequences of that discovery had a huge impact on the operations of the district with the closures of three elementary schools, the unplanned costs of relocation and transportation of students from those schools, the use of temporary portable units for classrooms, and the financial impact of unanticipated costs for removing the asbestos. In addition to the immediate costs in dealing with the asbestos issues, the loss of students who transferred from Ocean View to other districts had a direct impact on the financial health of the district, and according to press reports at that time nearly took the district into bankruptcy.

The Grand Jury developed the timeline below based on interviews with Ocean View district staff, school board members, and parents and based on the extensive press reporting of the story as it developed (see selected news articles used in developing the timeline in the Works Consulted section of this report).

- July 2014 - Work begins on \$40 million eleven campus modernization project (financed by \$23 million from the state, a loan of \$10.5 million, and \$6.5 million of internal funding)
- August and September 2014 - Unanticipated asbestos discovered by construction contractor at some school locations, contractor begins to remove the asbestos and then informs school board that it was doing so.
- September 16, 2014 - Parents and school board react strongly at a rescheduled regular board meeting to the discovery of asbestos removal work apparently occurring while students and staff were present at schools.
- October 6, 2014 - District decides to test for asbestos at all eleven campuses.
- October 8, 2014 - District closes three elementary schools (Hope View, Lake View, and Oak View), relocates 1300 students to other schools in the Ocean View School District and to nearby school districts.
- October 21, 2014 - Eight remaining schools are found to be safe for students and district determines to keep those schools open.
- January, 2015 - Oak View Elementary reopens but must use portable classrooms for housing many of the returned students.
- February, 2015 - Unanticipated costs for busing 1300 students, for portable classrooms, and for hazardous materials (asbestos, lead, and mold) remediation estimated to be between \$7.6 to \$11 million.
- February 16, 2015 - Ocean View School District attendance drops by 152 students in first half of school year, which could mean a loss of \$1.3 million in state funding.
- April, 2015 - Hope View Elementary reopens but must use portable classrooms for housing many of the returned students.
- September, 2015 - Hope View fully reopens for all students.
- February, 2016 - Oak View fully reopens.
- September 2016 - Lake View to reopen.

Lessons Learned from the Ocean View Experience

In order to gain an understanding of what contributed to the disruption to the Ocean View School District when it was forced to deal with the discovery of asbestos during modernization efforts at three of its elementary schools, the Orange County Grand Jury met with several stakeholders of the Ocean View School District. The Grand Jury conducted interviews with one or more school board members, parents, and management and facilities staff from the Ocean View Superintendent's office. The objective of both the Grand Jury and of those interviewed was not to assign blame but to gain insights into:

- Root causes of the problems experienced

- Impacts to the school district stakeholders, both the obvious and also those not so readily apparent
- Proactive steps that would have avoided the problems, or at least mitigated the problems, when they occurred
- Dealing with the aftermath of the discovery of asbestos issues
- Communication issues with their community
- Whether other school districts were at risk of repeating the Ocean View experience

Based on these Ocean View interviews the Grand Jury made the following observations:

- School districts are naturally focused on their success in educating their students and do not necessarily have in-depth knowledge of finance, contracting, contract management, and most notably of hazardous materials.
- Authority to issue school bonds is difficult to obtain, and there is a push, including legal requirements, to expend the money quickly while it is available to deal with what are typically long-standing needs. Trying to manage multiple major contracts at the same time presented too big a challenge for Ocean View.
- Small school districts are thinly resourced in personnel. At the time the Ocean View modernization effort started, management of the construction efforts was a part time assignment to one person, who had much more experience as an educator than as a construction manager.
- The District understood the desirability of doing construction work when students and staff were not present, but did not have good mechanisms in place for monitoring progress. This meant there was no schedule slack to deal with unanticipated problems, such as the discovery of asbestos, and no real knowledge of whether work would have been completed on time even if the asbestos problems had not occurred.
- Construction contracts lacked key schedule performance requirements and schedule progress reporting mechanisms.
- The District had lost awareness of the presence of encapsulated asbestos at the schools being modernized.
- The District was not out in front in dealing with the asbestos issue, but was generally in a reactive mode. The initial discovery of unanticipated asbestos removal allegedly occurring while students and staff were present at schools came from the community and this caused great consternation.

Orange County Department of Education Involvement with Hazardous Materials

As part of this investigation, the Grand Jury interviewed senior managers and administrative and facilities managers from the Orange County Department of Education (OCDE). The OCDE provided the Grand Jury with top-level insight into how Orange County schools deal with

hazardous materials and especially the key role that AHERA regulations play in avoiding asbestos issues. The Grand Jury learned somewhat to its surprise in these discussions that although the OCDE provides extensive high-level support services to public schools in Orange County, it has little direct control of the activities, policies, and administrative procedures of the twenty-seven independent school districts providing public education for the County. Each district has its own elected Board of Trustees that manages their district, appoints their own Superintendents, and are quite committed to local control of their schools.

The Orange County Department of Education provides more than support services to Orange County school districts; it operates its own school facilities serving approximately 8,000 students daily and 17,000 students annually. These facilities provide the OCDE's Alternative Community and Correctional Schools and Services (ACCESS) program. Hence, the OCDE has more than an academic interest in hazardous materials in public schools in Orange County. The OCDE must be AHERA compliant for its own facilities.

When the Grand Jury asked if the OCDE was interested in providing such things as hazardous materials training and standard contract language for use in contracting for construction, the OCDE demurred, citing again the local control issues. However, during these discussions the OCDE proposed an excellent idea to the Grand Jury. The OCDE holds monthly "all districts" meetings to foster interchange of information on topics of current interest to OC school districts. The proposed idea was to devote one or more of its all districts meetings to discussions of hazardous materials. The OCDE would take the lead in developing topics for discussion and accumulating relevant materials. Each district would be expected to engage actively in roundtable discussions and share their own lessons learned and the best practices they have adopted for consideration by other districts.

Interviews with Selected School Districts

As part of this investigation, the Grand Jury interviewed senior administrative and facilities managers from a selected set of the independent school districts. The Grand Jury tried to select randomly school districts of different sizes, at varied locations in the County, and which reflected some of the ethnic and racial diversity of the County student population. Below are common discussion points and themes raised in these interviews:

- All districts were acutely aware of the HB Ocean View asbestos experience.
- The general tenor of most discussions was that the district felt they had their asbestos risks well under control, but were reluctant to deal with public concerns that too much transparency and discussion of the topic would entail. The Ocean View experience graphically showed how emotional a topic the risk of exposure to asbestos was to parents and school staff.

- Interestingly, none of the districts brought up the occurrence of asbestos-related problems at other districts in the county besides Ocean View, although the Grand Jury later became aware of several examples in other districts.
- Although each district described what appeared to the Grand Jury to be reasonable “best practices” for dealing with hazardous materials and the contracting process, many relied on the general knowledge and experience of key staff and not on written policies, procedures, and/or guidelines.
- The districts all gave high priority to training on hazardous materials for their facilities staff as well as administrative and teaching staff, and viewed this as the best way of avoiding problems. An interesting resource more than one district pointed out is training provided by their insurance carriers, who have both excellent presentations and trainers on hazardous materials, and who share a common interest in avoiding risks and lawsuits.
- One idea broached by the Grand jury, to post the district’s AHERA reports on line, was largely unpopular and almost immediately rejected. The districts generally appeared to be very concerned about the public’s understanding of the risks of asbestos and about the possibility of creating a public relations problem that would take a lot of time and energy to mitigate.
- The vast majority of Districts were reluctant to get into detail as to how many, if any, of their schools had encapsulated asbestos present. The survey conducted by the GJ (discussed later in this report) subsequently made it clear to the GJ why this reluctance existed. All but one of the twenty-eight Orange County school districts had encapsulated asbestos present in at least one of the schools in their district. However, one initially reluctant district did accept the idea of posting AHERA reports during subsequent discussions on another topic, now seeing a value in transparency and safe preservation of key data.
- More than one district urged the Grand Jury to talk with charter schools about how those schools dealt with hazardous materials. These districts were uncomfortable with how little access they had to knowledge of the day-to-day operations of charter schools while still feeling ultimately responsible for the safety of all students in their district, including the students in the charter schools. Some of these managers expressed concerns that although the charter schools were funded by the public school system, the district had little control or visibility into what the charter schools were doing.
- Generally, the districts felt they were compliant with AHERA regulations. However, the Grand Jury notes that its surveys showed that few districts were actually fully compliant.

Interviews with Selected Charter Schools

Charter schools are authorized by local, county, or state level Boards of Education and funded with local school district monies. However, charter schools are managed by their own Boards of Trustees, and, based on the Grand Jury’s interactions with several charter schools, value their

independence highly. The school districts' areas of concern in their relationships with charter schools expressed to the Grand Jury explicitly included how well these schools dealt with hazardous materials.

The Grand Jury interviewed senior managers from a variety of Orange County charter schools. The charter schools all expressed pride in the special programs they offered. The Grand Jury sought to learn how the schools dealt with potential problems with hazardous materials, with the discussion focused on asbestos. The results of these interviews varied significantly. Some of the larger charter schools had senior managers with decades of prior experience working in large public schools. These managers were deeply knowledgeable about issues related to hazardous materials and of AHERA requirements. These schools also had the good fortune to be well funded and occupied newly constructed and/or completely refurbished facilities that they made sure were free of hazardous materials.

The Grand Jury also interviewed senior staff from several of the smaller charter schools and often found the awareness of hazardous materials issues at these schools far less robust. These schools tended to be small (500 to 1000 students), and often had less experienced senior managers, some of whom were relatively new to their school. Some charter schools occupied commercial or church properties; some charter schools occupied buildings that belonged to their school district. Some of these managers were at best vaguely aware of the hazards of asbestos and several had no clue as to AHERA requirements. These managers tended to rely on and/or assume that the people (school district, church, or commercial property lessors) providing their classroom and administrative facilities would be aware of and fix any issues with hazardous materials if they occurred.

An interview with a senior manager of one charter school provided a key example of the problems that unawareness of the presence of encapsulated asbestos can cause. The charter school decided to replace badly worn carpeting in their teachers' lounge. They hired a DIR-certified contractor to do this relatively minor work. After the contractor started work, he discovered that removing the carpet would expose encapsulated asbestos in the tiles and adhesive under the carpet and immediately stopped work. The charter school informed their school district of the problem encountered, and the district remediated the asbestos so that the carpet replacement could resume. The charter school manager was not aware of, nor could he find for the Grand Jury, any AHERA records for the teachers' lounge that would have warned their contractor of what he might encounter. However, the school district assured the Grand Jury that they would have provided such reports when they chartered the school.

It was clear to the Grand Jury that school districts' concerns with how well their charter schools are prepared to deal with hazardous materials are warranted in some cases. The respective roles and responsibilities of the district and their charter schools for dealing with hazardous materials,

staff training, and AHERA compliance must be clearly laid out by the districts as part of any charter approval process.

Interviews with Environmental Protection Agency

The Grand Jury interviewed senior managers from the Environmental Protection Agency located in the Washington, DC, and Sacramento, California, areas to understand that agency's role in administration and enforcement of regulations for the safe handling of asbestos. The EPA is administered out of Washington, DC, and is further broken into regional offices. Orange County, California, falls within EPA's Region 9, which consists of the states of California, Arizona, Nevada, Hawaii, plus 3 Pacific islands and 140 [Native American] tribes.

The EPA is broadly charged with enforcement of federal environmental regulations dealing with clean water, clean air, hazardous waste, pesticides, and toxic site cleanup. The EPA administers and regulates asbestos through the AHERA and National Emissions Standards for Hazardous Air Pollutants (NESHAP) Act. Although administration of some EPA regulations can be and has been delegated to states, regulations related to asbestos, by federal law, are not delegable to the state level.

Discussions with the EPA made it very clear that *all* schools are required to comply with AHERA regulations, including public schools, public charter schools, private schools, and religious schools. Although not discussed in these meetings with the EPA, the Grand Jury is troubled that some of the charter schools that it interviewed were clearly unaware, and apparently had not been informed by their district, of this fact.

The EPA performs inspections related to AHERA compliance as well as several other areas such as lead paint. However, EPA Region 9 has 60 personnel who inspect for compliance with regulations for all the hazardous materials within its purview including but scarcely limited to compliance with AHERA regulations. The Grand Jury was told that in reality the EPA conducts very few inspections under AHERA, only inspects individual schools within a district, and principally relies on the regulated community to do such inspections. The Grand Jury notes that a discussion of EPA inspections for AHERA compliance never came up voluntarily in its interviews with Orange County school districts. The Grand Jury was unable to locate any facilities personnel who could recall when the last inspection in their district had occurred. Given that Orange County has over 600 public schools and that EPA Region 9 has 60 inspectors for all hazardous materials enforcement, the rarity of AHERA-related inspections and the limitation of inspections to individual schools within a district became readily understandable to the Grand Jury. The EPA was reluctant to discuss how it selects which schools to inspect in order to preserve the element of surprise in its inspections.

Although inspections for AHERA compliance are rare, the EPA does conduct inspections and does have several escalating avenues it uses to enforce compliance:

- An informal “Out of Compliance” letter informs a school of the compliance issue found, asks that the issue be resolved, and warns that an enforcement action could be initiated if non-compliance continues.
- A more formal “Administrative Action” letter requires a school to talk with the EPA, states that a negotiated settlement is expected, and warns that the settlement could include penalties
- The settlement of non-compliance issues could result in an “Enforceable Consent Agreement”.

The conclusion reached by the Grand Jury is that given the limited EPA inspection resources, the only way citizens of Orange County can be assured of compliance with AHERA regulations by its school districts is through constant public awareness and through requiring school districts to develop, document, and enforce their own AHERA compliance programs.

Survey of Orange County Public School Districts Results and Analysis

In its investigation of how Orange County school districts implement the requirements of the Federal 1986 Asbestos Hazard Emergency Response Act (AHERA), the Grand Jury met with stakeholders of the Ocean View School District including one or more School Board members, parents, and management staff from the Superintendent’s office. Using the lessons learned from these interviews, the Grand Jury then interviewed representatives from a selected set of other Orange County school districts chosen to provide a cross section of district size, location in the County, and type of district (elementary, high school, unified). However, given the large number of school districts in Orange County, the Grand Jury was not able to formally interview representatives of every district.

In order to have comprehensive statistical data from all districts, the Grand Jury developed a set of survey questions based on what it learned in its preliminary interviews and from its analysis of applicable EPA regulations. The Grand Jury assured responders that survey results would be reported in the aggregate without attribution of specific responses to the individual districts that comprise the summarized data. Appendix G provides the survey questions.

The Grand Jury sent the survey to the Orange County DOE plus the 27 independent Orange County school districts and received completed surveys from all the districts. Key results and findings from the survey are discussed below.

Number of Schools with Asbestos Present

Early in its investigation the Grand Jury discussed whether the presence of asbestos in the Ocean View School District might have been an extremely rare occurrence. Unfortunately, this turned out not to be the case. Interviews with senior managers of a selected number of school districts quickly indicated to the Grand Jury that asbestos was a problem for more than just the Ocean View School District, although no one district was aware of the extent of the problem across Orange County. The results of the survey of all 28 school districts ended any Grand Jury optimism that problems with asbestos were isolated to only a few schools.

All but one of the 28 school districts in Orange County have asbestos present in one or more of their schools/buildings, and the presence of asbestos is not limited to a small number of schools in each district. As shown in Figure 3, well over two-thirds of the nearly 600 Orange County schools have encapsulated asbestos present in one or more of their buildings.

The Grand Jury again cautions that current EPA standards provide that the mere presence of encapsulated asbestos at a school site does not present any immediate danger to schoolchildren or staff at the site. However, the presence of encapsulated asbestos calls for each school district to maintain continued, active awareness and knowledge of the types of asbestos present, where the asbestos is located, and when asbestos removal needs to be undertaken. In addition, school districts must assure that they hire and closely monitor contractors who are qualified to properly remove (abate) hazardous materials prior to construction work and who know how to avoid disturbing encapsulated asbestos during repairs or modifications of a facility.

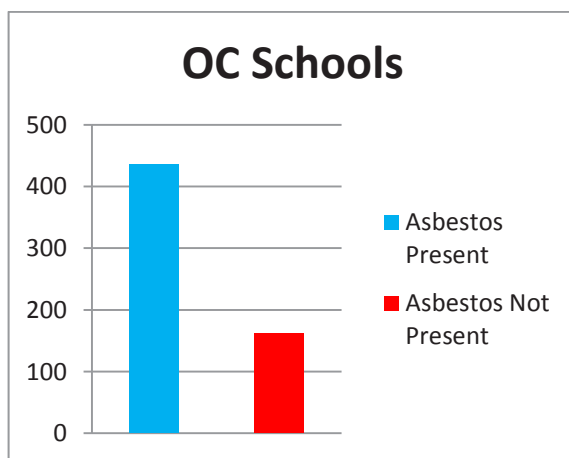


Figure 3. Over Two-thirds of Orange County Schools Have Asbestos Present

The survey (results not shown graphically) also revealed that progress in being made in removing asbestos from schools in Orange County, albeit slowly. At the time of the survey,

asbestos abatement work was in progress in four school districts, affecting a total of 22 schools in those districts.

AHERA Records

Based on the survey, the Grand Jury found that Orange County public schools are compliant with some top-level AHERA regulations, with all 28 districts having current AHERA reports available in a central location for each district. However, five districts do not comply with the requirement that each school have a copy of its own applicable AHERA reports available at the main office at each school. On a positive note, two school districts have chosen to place their AHERA reports on-line. The Grand Jury notes with appreciation this effort towards transparency. In addition to the benefits of transparency, placing AHERA reports on-line provides insurance against misplacing these documents or their loss in a fire or other natural disaster, so long as the data is backed up in a remote location.

AHERA Designated Persons and Training

On a much less positive note with respect to AHERA requirements, as shown in Figure 4, barely half of the school districts meet the AHERA requirement for a “Designated Person” at each school site. A Designated Person is required to be knowledgeable of and have received a minimum level of training in AHERA regulations.

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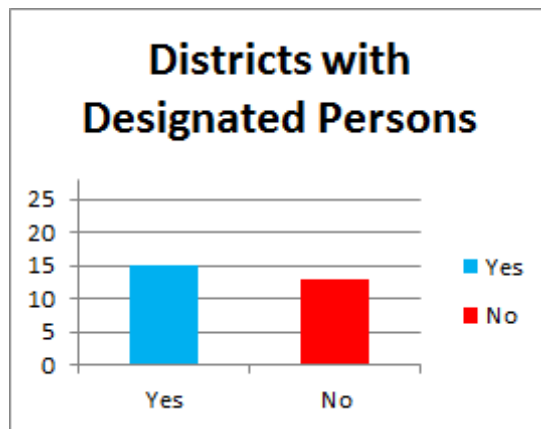


Figure 4. School Districts with AHERA “Designated Person” at Each School in District

Equally disappointing as shown in Figure 5 is the low fraction (less than half) of school staff who receive training on hazardous materials. The Grand Jury notes that it learned during its interviews with school districts that *facilities* staff are generally trained at least once per year, so this weakness is mostly in training of other teaching and administrative staff.

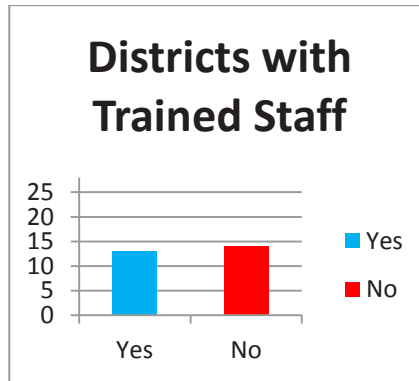


Figure 5. School Districts that Train Staff on Hazardous Materials

Facilities Management

Based on the survey (results not shown graphically), the Grand Jury found that 24 out of the 28 school districts have at least one full time person with facilities management as his/her main job duty, and four of the districts that lack a full time facilities manager have at least one part time facilities manager. Three of the districts with only a part time facilities managers are smaller districts (under 10,000 students), but the Grand Jury did find it surprising that one district with only a part time facilities manager has a student population of over 20,000 students.

Based on the survey (results not shown graphically), 14 districts have both a full time manager plus one or more part time staff with facilities management responsibilities.

Facilities Records

Based on survey results (not shown graphically), the Grand Jury found that 24 of the 28 districts do maintain a consolidated database listing such basic information as each school’s facilities/ structures, dates of construction, dates of major modifications and/or repairs, and dates of last AHERA inspection. Somewhat surprisingly, 4 districts did not have even this basic information easily accessible. Of the 24 districts that have a facilities database, 12 databases exist only on paper and hence are subject to loss and are difficult to maintain. Only one of the 28 districts posts its facilities information on-line, which, as the Grand Jury has noted earlier, is the best protection against misplacement or loss of this key information.

Facilities Plans

Based on survey results, as shown in Figure 6, over half of the Orange County school districts have plans to build new facilities in their district. Stringent building codes enforced at many levels of the government will preclude the introduction of asbestos containing materials into these new buildings.

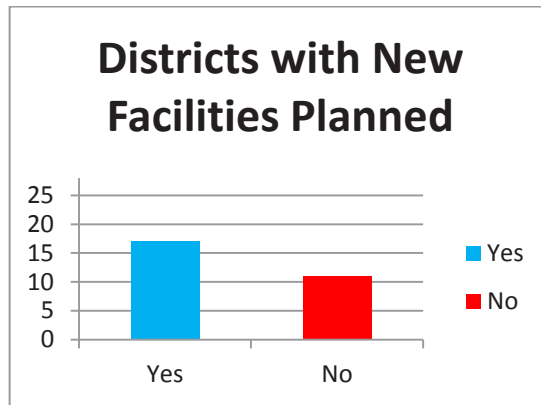


Figure 6. Districts with Plans to Build New Facilities

In addition to new facilities, based on survey results shown in Figure 7, 20 districts plan modernization/major repair efforts, which will involve asbestos abatement at one or more of their schools. All 20 of these districts have progressed in planning to the point of estimating the costs for these efforts. For 13 of these costed efforts, the districts have also identified the funding sources for the work and developed schedules for implementation. In addition to modernization/major repair efforts, which will include asbestos abatement as part of a much larger effort, three districts, are planning facilities work at one or more schools specifically targeted to asbestos abatement. However, only one of these three districts has a completed plan with cost estimates, funding sources, and implementation schedules for this abatement work. Based on these survey results, the Grand Jury sees a commitment for continuing asbestos abatement activities at over two-thirds of the Orange County school districts in the coming years.

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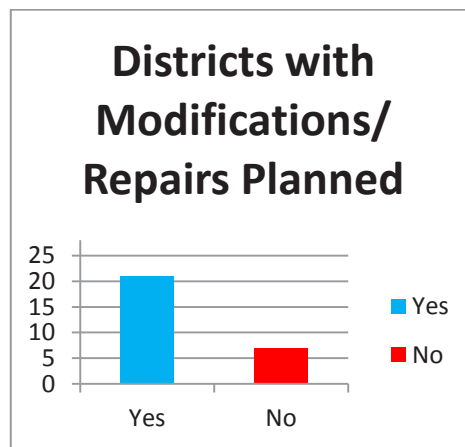


Figure 7. Districts Planning on Major Modifications/Repairs to Their Schools

An interesting result of the survey is that all but one of the Districts' plans for major facilities modifications/repairs will include asbestos abatement at one or more of the schools in their

district as part of these plans. This is not surprising given the presence of asbestos in so many schools in Orange County; many major modifications/repair efforts necessarily will be to buildings with asbestos present.

Given the prevalence of asbestos in Orange County schools, somewhat more surprising is how few districts have any plans specifically targeted to the abatement of asbestos. See Figure 8. The prevailing idea appears to be that it makes more economic sense to do asbestos abatement as part of a larger facilities modernization/major repair effort.

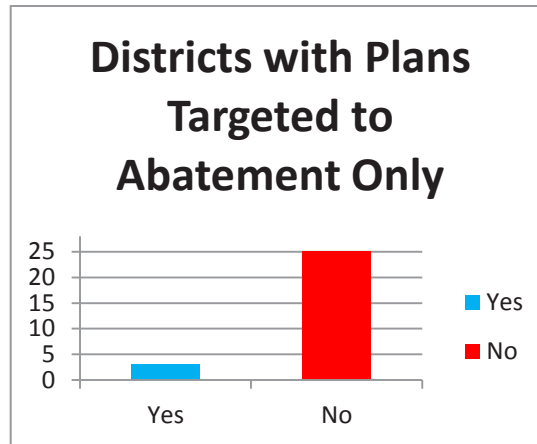


Figure 8. Districts with Abatement-Only Plans

Construction Management

The survey questions related to facilities construction management explicitly asked about the existence of *written* policies and procedures. This emphasis on written documentation reflects the Grand Jury’s strong conviction that a policy/procedure/“common practice” that relies on staff corporate memory/tradition is extremely vulnerable to being lost when staff turns over. One example supporting this concern is the survey question about scheduling construction work for times when students are not present. Although interviewees almost universally volunteered that they tried to schedule work for when students were not present, the survey had only two responders who said they had a written requirement to do this. Similarly, although most interviewees indicated that they made a point of contracting with three separate companies for inspections, abatement, and the construction following abatement, only nine of the 28 districts had a written requirement to do so. Only slightly more than half the districts had written policies requiring explicit schedule performance, including intermediate milestones, in their construction contracts. More details on construction related survey results are presented in the paragraphs below.

Four districts lack written requirements to use California Department of Industrial Relations (DIR)-certified contractors, even though this is a State requirement. However, based on interviews, all districts appear to be aware of and follow this requirement. A best practice cited by most districts interviewed is to limit construction activities to times when students are not present – weekends, breaks, or summer recesses depending on the duration of the planned construction effort. However, the survey showed that documented requirements for following this best practice are nearly universally missing. See Figure 9.

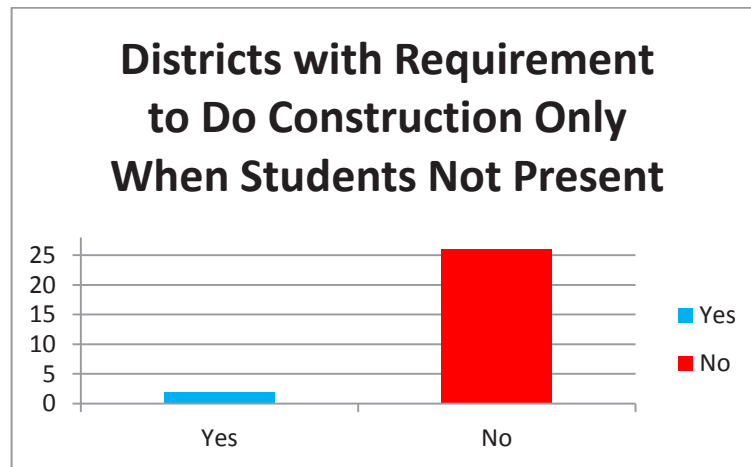


Figure 9. Districts with Written Requirement to do Construction When Students are not Present

Another best practice cited by most districts interviewed is to limit the scope of construction activities being undertaken at one time to the management resources available for active oversight of all construction efforts. However, the survey showed that *documented* requirements for following this best practice are nearly universally missing. See Figure 10.

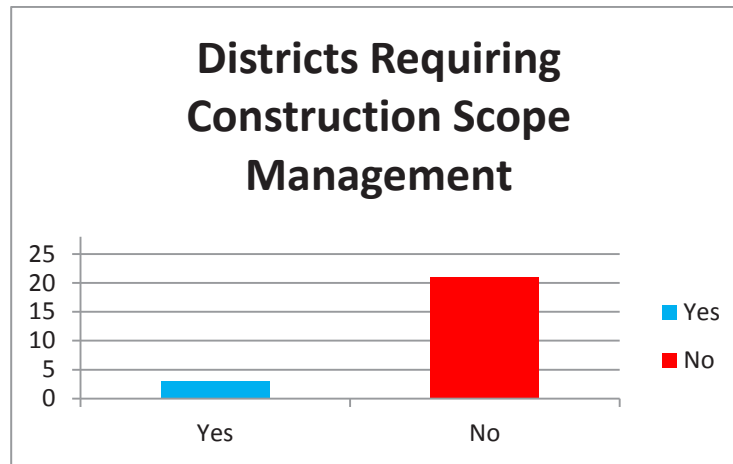


Figure 10. Districts with Documented Requirement to Match Construction Scope to Available Resources to Actively Manage the Work

Another best practice followed by many of the districts is to separate the three construction-related activities of inspecting for hazardous materials, abatement of hazardous materials if an inspection reveals their presence, and the actual construction work. This approach avoids any potential conflicts of interest among the contractors and assures a clear delineation of scope of effort for each contractor. Although many districts follow this best practice, only a third of them have documented the requirement for doing so (See Figure 11.) Note that although the contracted efforts are separated, the contractor doing the abatement work necessarily will have to coordinate work schedules with the building contractor.

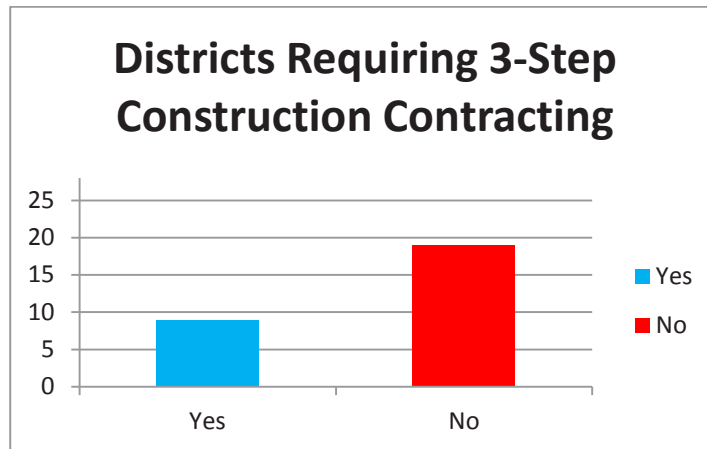


Figure 11. Districts with Documented Requirement to Separately Contract for Abatement

Given that including schedule performance requirements in contracts is a fundamental element of successful contracting, the Grand Jury was surprised to learn that over a third of Orange County school districts did not have a written policy to include explicit schedule performance requirements in their contracts. This lack is particularly concerning given the strong desire for

schools to do construction work when students are not present. Schedule slips are worrisome in any contract, but slipping school construction work into times when students will be present can severely impact school operations. As Figure 12 shows, over a third of OC school districts lack a written policy to include the appropriate schedule performance requirements in their contracts.

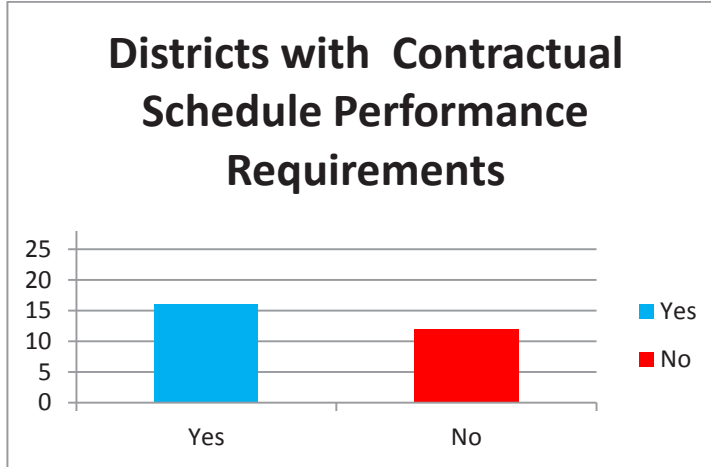


Figure 12. Districts Specifying Schedule Performance in Contract

The only way to stay on top of longer, time critical construction efforts is to define milestones and dates for completed steps along the way to accomplishing the total effort. As Figure 13 shows, barely more than half of OC school districts have a written policy to include intermediate schedule milestones in their longer-duration contracts.

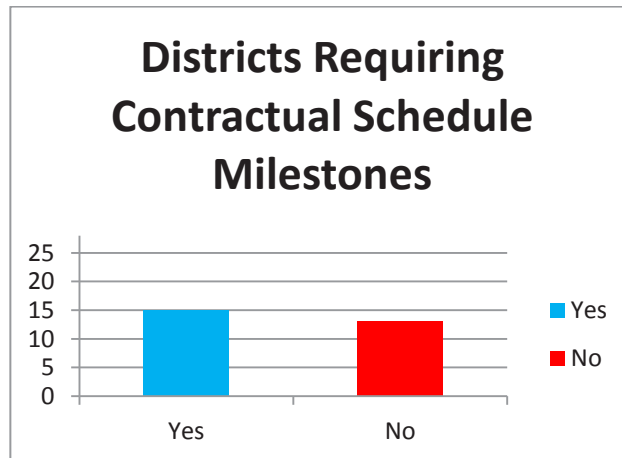


Figure 13. Districts Requiring Intermediate Schedule Performance Milestones

One very positive result found in the survey is that all but one school district has explicit policy direction that facilities management staff personally monitor construction progress through on-site walk-throughs at the construction locations.

Community Communications

The survey asked each district if it in its communication with its stakeholders (parents, students, community, and via its web site) the district provided key information in languages other than English. Given the high ethnic and language diversity in OC schools, the Grand Jury was pleased to learn that 22 districts do make the effort to communicate with their non-English speaking stakeholders. However, the Jury was surprised that two schools replied that they communicate only in English and that four schools feel that such non-English communication is “not applicable” to them. The Grand Jury notes with disapproval that all six of these “English-only communications” school districts have combined Hispanic and/or Asian minority populations exceeding 50% of their total student population. (See Tables 4 and 5 in Appendix E, which detail Orange County the racial and ethnic diversity of Orange County Schools.) The Grand Jury is aware that members of ethnic or cultural minorities may in fact be quite proficient in English, but also believes that this may not be the case for all members of such groups and that outreach to these stakeholders is much needed. Survey results are shown in Figure 14.

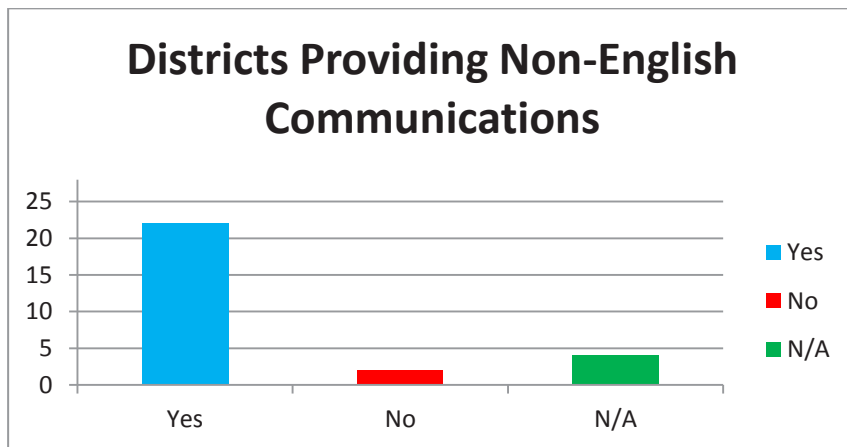


Figure 14. Districts Providing Non-English Communication with Their Community

Language issues aside, the survey showed that only five districts have a written policy to notify their communities about upcoming construction activities. For only three of these five districts did their policy explicitly require notification of abatement activities. Given general community concerns with safety at their schools, a lack of transparency by school districts about upcoming construction activities, and especially if those activities will involve abatement of hazardous materials, has been shown to cause great concern. Openness by school districts should mitigate

such community concerns; it is always better to deal with issues up front than to do damage control after the fact.

FINDINGS

In accordance with *California Penal Code* Sections 933 and 933.05, the 2015-2016 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 “Dealing with Asbestos in Orange County Public Schools”, the 2015-2016 Orange County Grand Jury has arrived at twelve principal findings, as follows:

Note that the Findings below often make general assertions about Orange County school districts. Each District should respond to these general findings only as each Finding applies to their district and not speculate as to the applicability of the Finding to other districts.

- F1.** All but one of Orange County’s twenty-eight school districts have (encapsulated) asbestos present at one or more its schools.
- F2.** Although current EPA standards provide that encapsulated asbestos does not present an immediate hazard to people who come near it, any physical disturbance and/or weathering which damages that encapsulation and releases asbestos fibers into the air will present an immediate hazard to anyone exposed to those fibers. Hence, broad-based awareness of where encapsulated asbestos is located is essential to avoid disturbing it such that it does become a threat to students and staff.
- F3.** Many school districts are not in full compliance with the AHERA regulatory requirement to have applicable AHERA reports available in the main offices of each school for public review.
- F4.** Many school districts are not in full compliance with the AHERA regulatory requirement to identify at each school in their district a “Designated Person” and to train each Designated Person to EPA-defined standards.
- F5.** Although nearly all school districts train their facilities and maintenance staff on hazardous materials management, many fail to provide hazardous materials training to their teaching and administrative staff.
- F6.** Orange County public schools are subject to very infrequent EPA inspections for AHERA compliance.
- F7.** Inadequately managed construction efforts at more than one Orange County public school have led to expensive and disruptive hazardous materials events. Many Orange County school districts lack one or more *documented* requirements for contracting for construction

that implement generally recognized best practices for dealing with hazardous materials. Such written best practices include:

- a. Performing all work at schools that deals with, or potentially deals with, hazardous materials at times when students and staff are not present,
 - b. Controlling the scope of construction/modernization/major repairs undertaken in any one year to remain within the district's ability to manage the efforts,
 - c. Separately contracting for hazardous materials inspection, abatement, and construction work once hazardous materials are abated,
 - d. Including clear schedule performance requirements in every contract,
 - e. Defining intermediate schedule milestones for all construction-related work that is expected to take over one month to complete, and
 - f. Requiring monitoring by district senior staff of progress on construction work via personal walkthroughs of the work in progress.
- F8.** Many school districts with public charter schools approved and financed by their district, lack, and have not provided their charter schools with, written definitions of the respective roles and responsibilities of the district and the charter school in dealing with hazardous materials and with AHERA regulatory compliance.
- F9.** Many school districts rely on paper documents for recording key information such as facilities data, facilities construction and repair plans, and AHERA reports.
- F10.** Some school districts have no documented facilities plans, and many districts that have plans lack key information in their plans such as estimated costs, funding sources, and schedules for work initiation and completion.
- F11.** Many school districts fail to post key safety-related information on their web sites such as upcoming activities at school facilities involving the abatement of hazardous materials.
- F12.** Despite the fact that all Orange County school districts serve highly language-diverse communities, several districts have no provision for communicating with their community in any language other than English.

RECOMMENDATIONS

In accordance with *California Penal Code* Sections 933 and 933.05, the 2015-2016 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 “Dealing with Asbestos in Orange County Public Schools”, the 2015-2016 Orange County Grand Jury makes the following twenty recommendations:

- R1.** Each school district should request the Orange County Department of Education to devote, in the year following publication of this Grand Jury report, one or more of its monthly “all districts” meetings to discussion and advice on handling hazardous materials. Representatives from each school district should participate in these meetings, and discussions should cover, AHERA compliance, resources available for in-depth AHERA training, and contract management. **(F1, F2, F3, F4, F5, F6, F7, F8)**
- R2.** Each school district should within nine months of the publication of this Grand Jury report develop and document a communications plan for parents and other stakeholders and post the plan on its web site. The plan should identify what information will be provided and by what means this communication will be accomplished. The plan should address how issues relating to hazardous materials will be communicated, and in what languages, to ensure effective communication. **(F10, F11, F12)**
- R3.** Each school district should within nine months of the publication of this Grand Jury report create and have a process in place to use and keep up-to-date their web site communications with parents and stakeholders of that district. **(F9, F10, F11)**
- R4.** Each school district should develop and maintain a computerized database listing all district buildings and structures and post that information on its web site. The database should contain the following for each building: date and types of construction, dates and costs of major repairs and modernization, numbers and sizes of classrooms, lists of other facilities including offices, lounges, gyms, cafeterias, laboratories, computers and other data processing equipment, and playground equipment. **(F9, F10)**
- R5.** Each school district should within nine months of the publication of this Grand Jury report create a comprehensive baseline plan for school facilities construction including new construction, retirement of schools or buildings at schools, modernization, hazardous materials abatement, and major repairs. Each effort should include estimated cost, planned funding source and status, and schedule for start and completion of work. This plan should be updated annually and posted on the district’s web site. **(F9, F10)**
- R6.** Each school district should within nine months of the publication of this Grand Jury report create a plan, identifying funding sources, to remove all asbestos from schools and other facilities in their district within twenty years or sooner and report progress on this plan annually at its board meetings. If the removal of asbestos would include removal of other hazardous materials as part of the same effort, the plan should describe this. **(F1, F2, F10)**

- R7.** Each district should within nine months of the publication of this Grand Jury report document and implement requirements to budget for and perform AHERA inspections every three years. (F6)
- R8.** Each district should within nine months of the publication of this Grand Jury report document and implement requirements to make available at the main office of each school in its district the AHERA reports applicable to that school. (F3, F6)
- R9.** Each district should within nine months of the publication of this Grand Jury report appoint an EPA-defined “Designated Person” at each school, and provide the EPA-required training for those persons. (F4, F6)
- R10.** Each district should within nine months of the publication of this Grand Jury report identify the hazardous materials training requirements for management, facilities (including maintenance contractors if they are used), and administrative personnel, and teaching staff in its district. Each district should maintain records on the training provided, including content, to whom it was provided, when it was provided, who provided it, qualifications of trainer(s). (F5)
- R11.** Each district should within nine months of the publication of this Grand Jury report document and implement requirements to schedule and complete any work involving hazardous materials for days when students and staff are not present in the affected areas. (F7)
- R12.** Each district should within nine months of the publication of this Grand Jury report document and implement requirements for district schools to contract separately for hazardous materials inspections, remediation/abatement of those materials, and the actual construction in areas requiring remediation . (F7)
- R13.** Each district should within nine months of the publication of this Grand Jury report document and implement requirements for district schools to include schedule performance requirements in every contract for repairs, modernization, and/or new construction. Intermediate schedule milestones should be defined in every contract for all work anticipated to take longer than one month to complete. (F7)
- R14.** Each district should within nine months of the publication of this Grand Jury report document and implement requirements for district schools to monitor contractor schedule performance. Such monitoring should be via personal staff walk-throughs of work in progress. Procedure should require every contractor to report monthly on that contractor’s performance in meeting schedule milestones and report on the current estimated date of completion of all work. (F7)

- R15.** Each district with current plans for modernization and/or major repairs to school facilities which lack schedules for completion, which lack cost estimates, and/or which fail to identify funding sources should within nine months of the publication of this Grand Jury report update its plans to include these data. **(F10)**
- R16.** Each district should within nine months of the publication of this Grand Jury report share all site specific AHERA inspection data with all prospective bidders on repair, modernization, and/or new construction at that site. **(F7)**
- R17.** Each district should within nine months of the publication of this Grand Jury report document and implement requirements to maintain all current AHERA reports electronically with a backup at one remote location, and not rely exclusively on paper copies. **(F9, F10)**
- R18.** Each district should within nine months of the publication of this Grand Jury report document and implement requirements to make its AHERA reports available on that district's web site. **(F9)**
- R19.** Each district should within nine months of the publication of this Grand Jury report prepare written procedures for district charter schools clearly defining roles and responsibilities for facilities maintenance including the handling of hazardous materials. The procedures should address how district charter schools will pay for, achieve, and maintain AHERA compliance (e.g., AHERA inspections, identification and training of AHERA Designated Person(s), and availability of AHERA reports), **(F8)**
- R20.** Each district should within nine months of the publication of this Grand Jury report prepare and implement written procedures defining roles and responsibilities for contracting for and monitoring performance of all construction activities at district charter schools. **(F8)**

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 County 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) detail, 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 therefor.

(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 therefor.

(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 or requested from:

Responses Required:

Responses are required from the following governing bodies within 90 days of the date of the publication of this report:

Required Responses - Findings

Responses to the twelve principal findings are required the governing bodies of the twenty-seven independent Orange County School Districts.

Required Responses - Recommendations

Responses to the twenty recommendations are required from the governing bodies of the twenty-seven independent Orange County School Districts.

Responses Requested:

Requested Responses – Findings

Responses to the 12 principal findings are requested from the governing body of the Orange County Department of Education, from the Superintendent of the Orange County Department of Education, and from the Superintendents of the twenty-seven independent Orange County School Districts

Requested Responses - Recommendations

Responses to the 20 recommendations are requested from the governing body of the Orange County Department of Education, from the Superintendent of the Orange County Department of Education, and from the Superintendents of the twenty-seven independent Orange County School Districts.

REPORT
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APPENDICES

Appendix A: Acronyms

ACBM - Asbestos-Containing Building Materials
ACCESS – Alternative Community and Correctional Schools and Services
ACM - Asbestos-Containing Material
AHERA - Asbestos Hazardous Emergency Response Act
ASHARA - Asbestos School Hazard Abatement Reauthorization Act
DIR – Department of Industrial Relations
DOT - Department of Transportation
EPA - Environmental Protection Agency
HSD – High School District
K - Kindergarten
LEA - Local Education Agency
MAP - Asbestos Model Accreditation Plan
NESHAP - National Emission Standard for Hazardous Air Pollutants
NIOSH - National Institute of Occupational Safety and Health
O&M - Operations and Maintenance
OCDE – Orange County Department of Education
OSHA - Occupational Safety and Health Administration
PCM - Phase Contrast Microscopy
PLM - Polarized Light Microscopy
TEM - Transmission Electron Microscopy
TSCA - Toxic Substances Control Act
USD – Unified School District

Appendix B: Glossary

Asbestos abatement - generally means any demolition, renovation, repair, construction or maintenance activity that involves the repair, enclosure, encapsulation, removal, salvage, handling, or disposal of any asbestos-containing material (ACM) with the potential of releasing asbestos fibers from asbestos-containing material into the air. *Note that in the context of this report abatement of asbestos means its safe removal and is essentially synonymous with remediation, which also implies removal and not mere encapsulation.*

Asbestos remediation - the removal of damaged asbestos materials and fibers prior to building demolition or remodeling.

Asbestos-Containing Material (ACM) -- Any material or product that contains more than one percent asbestos.

Asbestos-Containing Building Material (ACBM) -- Surfacing ACM, thermal system insulation ACM, or miscellaneous ACM that is found in or on interior structural members or other parts of a school building.

Encapsulation - Treatment of asbestos-containing materials (ACM) with a sealant material that surrounds or embeds asbestos fibers in an adhesive matrix to prevent the release of fibers.

Friable ACBM -- Material that may be crumbled, pulverized, or reduced to powder by hand pressure when dry. Friable ACBM also includes previously nonfriable material when it becomes damaged to the extent that when dry it may it may be crumbled, pulverized, or reduced to powder by hand pressure.

Nonfriable ACBM -- Material that, when dry, may not be crumbled, pulverized, or reduced to powder by hand pressure.

Surfacing ACM -- Interior ACM that has been sprayed on, troweled on, or otherwise applied to surfaces (structural members, walls, ceilings, etc.) for acoustical, decorative, fireproofing, or other purposes.

Thermal System ACM -- Insulation used to control heat transfer or prevent condensation on pipes and pipe fittings, boilers, breeching, tanks, ducts, and other parts of hot and cold water systems; heating, ventilation, and air-conditioning (HVAC) systems; or other mechanical systems.

Miscellaneous ACM -- Other, mostly nonfriable, products and materials (found on structural components, structural members or fixtures) such as floor tile, ceiling tile, construction mastic for floor and ceiling materials, sheet flooring, fire doors, asbestos cement pipe and board, wallboard, acoustical wall tile, and vibration damping cloth. Undamaged non-friable ACBM should be treated as friable if any action performed would render these materials friable. When previously non-friable ACBM becomes damaged to the extent that when dry it may it may be crumbled, pulverized, or reduced to powder by hand pressure, it should be treated as friable.

Appendix C: Asbestos Overview

Characteristics of Asbestos

Asbestos is comprised of a group of natural minerals that are resistant to heat and corrosion. Unlike other minerals, however, the crystals of asbestos form long, thin fibers. Once extracted from the earth, asbestos-containing rock is crushed, milled (or ground), and graded. This produces long, thread-like fibers of material. What appears to the naked eye as a single fiber is actually a bundle of hundreds or thousands of fibers, each of which can be divided even further into tiny fibers (fibrils), invisible without the aid of a microscope.

Uses of Asbestos

Asbestos has been used in thousands of products, largely because it is plentiful, readily available, cheap, strong, does not burn, conducts heat and electricity poorly, and is resistant to chemical corrosion. Products made with asbestos are often referred to as asbestos-containing materials (ACM).

Asbestos proved particularly useful in the construction industry. Building materials that contain asbestos are referred to as asbestos-containing building materials (ACBM). Commercial usage of asbestos products in the construction industry was most common from about 1945 to 1980. Some of the most common uses of ACBM include:

- Fireproofing material -- Usually spray-applied to steel beams used in construction of multi-story buildings to prevent structural members from warping or collapsing in the event of fire.
- Insulation material -- Usually spray-applied, trowel-applied, or manually installed after being preformed to fit surfaces such as pipes for thermal insulation and condensation control.
- Acoustical or soundproofing material -- Trowel- or spray-applied. May also be used for decoration. Asbestos was mixed with other materials and sprayed onto ceilings and walls to produce a soft, textured look.
- Miscellaneous materials -- Asbestos has been added to asphalt, vinyl, cement and other materials to make products like roofing felts, exterior siding and roofing shingles, wallboard, pipes for water supply, combustion vents, and flues for waste gases and heat. Fibers in asbestos cement, asphalt, and vinyl materials are usually firmly bound into materials in good condition and typically will be released only if the material is damaged mechanically -- for example through drilling, cutting, grinding, or sanding. In addition, asbestos in roofing shingles and siding exposed to weathering may slowly deteriorate and has the potential to release fibers.

Examples of the more common ACBM found in schools are flooring, vinyl base, mastic, roofing materials, gaskets in heating and air-conditioning equipment, ceiling panels and tiles, wallboard, joint compound, plaster, pipe and boiler insulation, duct-wrap insulation, duct joint tape, duct vibration dampening cloth, fireproofing on structural members, fire brick for boilers, fire doors, acoustical spray-on, cement pipes, and panels.

Friable vs. Nonfriable ACBM:

Friable ACBM will release fibers into the air more readily than nonfriable ACBM. Therefore, the AHERA Rule differentiates between friable and nonfriable ACBM. The regulations define friable ACBM as material that may be crumbled, pulverized, or reduced to powder by hand pressure when dry. Friable ACBM also includes previously nonfriable material when it becomes damaged to the extent that when dry it may it may be crumbled, pulverized, or reduced to powder by hand pressure. Undamaged non-friable ACBM should be treated as friable if any action performed would render these materials friable. When previously non-friable ACBM becomes damaged to the extent that when dry it may it may be crumbled, pulverized, or reduced to powder by hand pressure, it should be treated as friable.

Appendix D: Asbestos Health Hazards

Health Effects Associated with Asbestos Exposure

The health effects associated with asbestos exposure have been studied for many years. Results of these studies show that inhalation (breathing in) of asbestos fibers leads to increased risk of developing several diseases. Exactly why some people develop these diseases remains a mystery, but it has been well demonstrated that most asbestos-related illnesses are dose-response related (i.e., the greater the exposure to airborne asbestos fibers, the greater the risk of developing an illness).

Relative Hazards of Asbestos Exposure

Asbestos is well recognized as a health hazard and its use is now highly regulated by both OSHA and EPA. Asbestos fibers associated with these health risks are too small to be seen with the naked eye. Breathing asbestos fibers can cause a buildup of scar-like tissue in the lungs called asbestosis and result in loss of lung function that often progresses to disability and death. Asbestos also causes cancer of the lung and other diseases such as mesothelioma of the pleura which is a fatal malignant tumor of the membrane lining the cavity of the lung or stomach. Epidemiologic evidence has increasingly shown that all asbestos fiber types, including the most commonly used form of asbestos, chrysotile, causes mesothelioma in humans. There is no "safe" level of asbestos exposure for any type of asbestos fiber.

Almost daily, we are exposed to some prevailing level of asbestos fibers in buildings or experience some existing level in the outdoor air. Some fibers that are inhaled remain in the lungs. Brief "bursts" of exposure, when added to the background level, increase the potential to cause or trigger the development of an asbestos related disease. These brief bursts of exposure occur in many ways. For example, when a carpenter drills a hole in an asbestos fire door without taking any precautions, an increased amount of asbestos may be released into the air. The more often these bursts of exposure occur, the greater the risk of breathing asbestos fibers. People most at risk for this additional exposure are maintenance and construction workers who work on and disturb asbestos in buildings. This clearly demonstrates the need for an active asbestos policy and an ongoing operations and maintenance (O&M) plan for buildings that contain ACBM.

It is important to recognize that the majority of people who have developed diseases because of asbestos exposures are former asbestos workers. These workers were frequently exposed to high levels of asbestos fibers each working day, with little or no protection. Today's asbestos maintenance workers and AHERA-trained asbestos abatement workers are trained to follow specific work practices and wear appropriate protection, including respirators, to minimize the risk of exposure. However, increased risk may occur when a worker who does not use a respirator or follow specific work practices disturbs any ACBM.

The Respiratory System

The effects of asbestos exposure most often involve the lungs. Air breathed into the body passes through the mouth and nose, continuing into the windpipe. The windpipe divides into smaller and smaller tubes that end up in the lungs as air sacs called alveoli. It is in these air sacs that respiration occurs. Oxygen is absorbed into tiny blood vessels (or capillaries), and waste gases, such as carbon dioxide, pass out of the blood and are exhaled.

The body has several mechanisms to "filter" the air it breathes. First, large particles are removed in the nose and mouth. Many smaller particles are caught on the mucus-coated walls of the airway tubes. These airways have "hairy" linings (ciliate cells) that constantly propel mucus upward. Particles caught in the mucus are swept up into the back of the mouth. From here they are swallowed or expelled (spit out). Unfortunately, cigarette smoking temporarily paralyzes these hair-like cells, disabling one of the body's natural defenses against unwanted dust or fibers. Despite natural bodily defenses, some dust particles inevitably reach the tiny air sacs in the lungs. When this occurs, the human immune system dispatches large cells called macrophages to engulf the particles and "digest" them. These cells deposit a coating on the particles and may begin forming scar tissue around them. This is just another natural defense mechanism the body uses against unwanted debris in the lungs.

Asbestos-Related Diseases

If the body's defenses fail to control or remove asbestos fibers that enter the lungs, the risk of developing an asbestos-related disease increases. Asbestos-related diseases include asbestosis, lung cancer, mesothelioma, and other cancers.

Based on a thorough review of the literature available on the health effects of asbestos, the National Institute for Occupational Safety and Health (NIOSH) has concluded that there is no level below which the risks of contracting an asbestos-related disease are zero. This means that there is no established safe level of exposure to asbestos.

EPA Policy for Asbestos Control in Schools

EPA bases its policy for asbestos control in schools on the following premises:

- Although asbestos is hazardous, the risk of asbestos-related disease depends upon exposure to airborne asbestos fibers.
- Based upon available data, the average airborne asbestos levels in buildings seem to be very low. Accordingly, the health risk to most building occupants also appears to be very low.
- Removal is often not a building owner's best course of action to reduce asbestos exposure. In fact, an improper removal can create a dangerous situation where none previously existed.
- EPA only requires asbestos removal to prevent significant public exposure to airborne asbestos fibers during building demolition or renovation activities.
- Asbestos that has been identified will pose little risk if it is well maintained under an operations and maintenance program. Improper operations and maintenance also can cause dangerous

situations. Therefore, EPA requires a pro-active, in-place management program whenever ACM is discovered and is not removed.

Summary Key Points About Asbestos Health Risks

Asbestos-related diseases are dose-response related (the greater the exposure to airborne fibers, the greater the risk of developing an illness) and have a latency period (typically 15 to 30 years). Exposure to asbestos may result in asbestosis (a disease characterized by lung scarring, which reduces the lungs' ability to function), lung cancer, mesothelioma (always-fatal cancer arising in the chest or abdominal cavity), and other diseases. Risks associated with low-level, non-occupational exposure (e.g., a building occupant who is not actually disturbing the asbestos) are not well established. The National Institute for Occupational Safety and Health (NIOSH) has determined, however, that there is no established safe level of exposure. Asbestos that has been identified will pose little risk if it is well maintained under an operations and maintenance program. EPA only requires asbestos removal to prevent significant public exposure to airborne asbestos fibers during building demolition or renovation activities.

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Appendix E: Racial and Ethnic Diversity in Orange County Schools

As shown in Table 4, Orange County public schools serve a very diverse population of students in terms of racial and ethnic backgrounds. This diversity in the communities served can present difficulties in communication when dealing with potentially contentious topics related to hazardous materials.

Table 4. Racial and Ethnic Diversity in Orange County Schools

	Number of Students	Percent of Total Student Population
American Indian/Alaskan Native	2,121	0.42%
Asian	84,485	16.88%
Black/African American	7,380	1.47%
Hispanic/Latino	243,967	48.75%
Native Hawaiian/Pacific Islander	1,979	0.40%
White	144,012	28.77%
Multiple responses	14,271	2.85%
No Response	2,272	0.45%
Total	500,487	100.00%

As shown in Table 5, in addition to this county-wide diversity in the race/ethnicity of its student population, individual school districts are remarkably diverse both in terms of the size of their student populations and in the racial/ethnic diversity of that population within each district. As a consequence, districts will need to establish requirements for communicating with minority members of their community tailored to the unique demographics of their district and possibly even tailored to individual schools. With apologies to students reflecting the rich language and cultural differences of American Indian/Alaskan Native, Black/African American, and Native Hawaiian/Pacific Islander populations, in order to keep the table below readable the Grand Jury for the purposes of this report has consolidated these groups (along with “multiple responses” and “no response”) into “Other”.

District populations vary from a high of 57,333 students in the Santa Ana Unified School District (SAUSD) to a low of 2,383 students in the Savannah School District. Hispanic students comprise a high of 93.2% of the SAUSD and a low of 9.3% of the Laguna Beach Unified School District. Asian students comprise a high of 46.7% of the Irvine Unified School District and a low of only

2.8% of the La Habra School District. White students comprise a high of 81.0% of the Laguna Beach Unified School District and a low of only 2.7% of the SAUSD.

Note that the figure below on diversity in Orange County schools is from an OCDE 2012-2013 report, the latest available at the time this report was written, and shows data for 586 schools.

The data in the other figures in this section come from the OCDE 2015-2016 report showing data for 598 schools. This minor mismatch in available data doesn't affect the point being made as to the remarkable racial and ethnic diversity of the student populations of the various Orange County school districts.

Table 5. Racial and Ethnic Diversity by School District

	Number of Schools	Grades	Number of Students	Demographics			
				Hispanic	Asian	White	Other
Orange County K-12 Totals	586		501,705	48.3%	16.8%	29.4%	5.5%
Orange County Department of Education			7,184	60.1%	6.1%	23.9%	9.9%
Anaheim City School District	24	K-6	19,125	86.3%	6.1%	4.5%	3.1%
Anaheim Union High School District	21	7-12	32,085	64.1%	16.4%	12.5%	7.0%
Brea Olinda Unified School District	9	K-12	5,972	34.1%	21.7%	39.8%	4.4%
Buena Park School District	7	K-8	5,349	63.6%	19.5%	9.6%	7.3%
Capistrano Unified School District	52	K-12	53,785	25.1%	7.1%	60.0%	7.8%
Centralia Elementary School District	8	K-6	4,501	54.4%	22.8%	15.1%	7.7%
Cypress School District	6	K-6	3,879	27.2%	39.2%	26.4%	7.2%
Fountain Valley School District	10	K-8	6,344	15.4%	35.2%	42.9%	6.5%
Fullerton School District	20	K-8	13,830	50.0%	22.9%	20.7%	6.4%
Fullerton Joint Union High School District	8	9-12	14,607	53.1%	21.6%	20.4%	4.9%
Garden Grove Unified School District	70	K-12	47,599	53.5%	34.2%	9.9%	2.4%
Huntington Beach City	9	K-8	7,056	19.0%	10.2%	62.4%	8.4%
Huntington Beach Union High School District	8	9-12	16,400	24.6%	23.1%	39.7%	12.6%
Irvine Unified School District	36	K-12	29,072	10.5%	46.7%	34.2%	8.6%
La Habra City School District	9	K-8	5,250	85.1%	2.8%	9.7%	2.4%
Laguna Beach Unified School District	4	K-12	3,045	9.3%	4.4%	81.0%	5.3%
Los Alamitos Unified School District	10	K-12	9,912	22.6%	14.0%	54.3%	9.1%
Magnolia School District	9	K-6	6,353	69.8%	14.1%	9.6%	6.5%
Newport-Mesa Unified School District	32	K-12	22,003	43.5%	5.2%	47.7%	3.6%
Ocean View School District	17	K-8	9,418	36.4%	14.5%	42.8%	6.3%
Orange Unified School District	37	K-12	29,854	51.8%	11.5%	32.1%	4.6%
Placentia-Yorba Linda Unified School District	33	K-12	25,622	39.2%	14.0%	42.7%	4.1%
Saddleback Valley Unified School District	35	K-12	30,355	30.6%	10.3%	51.9%	7.2%
Santa Ana Unified School District	61	K-12	57,333	93.2%	3.0%	2.7%	1.1%
Savanna School District	4	K-6	2,383	59.1%	19.8%	13.6%	7.5%
Tustin Unified School District	30	K-12	23,771	46.4%	18.6%	29.8%	5.2%
Westminster School District	17	K-8	9,618	42.5%	39.9%	13.3%	4.3%

Appendix F: Example AHERA Report

This appendix shows what an AHERA report for a school looks like. It is a current report for one school in one district in Orange County. By federal law, this report is available to the public. However, the Grand Jury has chosen to redact the information which identifies the school this report is for so that the focus is on the report and not the particular school. The Grand Jury selected this report for inclusion because the school does have encapsulated asbestos present. Since well over two-thirds of Orange County K-12 public schools have encapsulated present, the selection by the Grand Jury of this particular school where asbestos is present was arbitrary. The full report for this one school is 31 pages long. For this appendix, the Grand Jury selected and numbered the following pages from that report:

Page 1 – Report Cover Letter. (The Grand Jury removed information identifying the particular contractor performing the inspection.)

Page 2 – Table of Contents of the report.

Pages 3 and 4 – Executive Summary. This provides an excellent overview of the status of asbestos-containing-materials at this school including location of the asbestos and recommendations. Recommendations and Status for this particular school include: “Abate upon upgrade of system or material,” “Concealed by carpet,” and “Removed.”

Page 5 – The Vice Principal’s and Principal’s office are shown to have asbestos-containing-materials in floor tiles that are covered by carpet (and hence considered safely encapsulated by the inspector). The “Material Code #” of FLT-02 indicates that the asbestos-containing-material is floor tiles.

Page 6 - This shows a clean report for a heater closet that previously contained pipe elbow fittings (Material Code #01), which apparently had been removed after the prior inspection report.

Page 7 – This page explains the notations used in the reports for each school area for Material Codes and Abbreviations, Priority Levels, Cleaning Levels, and Response Actions and [associated] Priority Levels.

January 3, 2013

Regarding: Asbestos AHERA Re-Inspection Survey Report: [REDACTED]

Dear [REDACTED]

On December 20, 2012, [REDACTED] visited the above referenced school property for the purpose of performing an Asbestos AHERA Re-Inspection Survey. The attached report, which contains background information, a synopsis of the inspection strategies utilized, conclusions, and recommendations, has been prepared to present the survey findings.

If you have any comments or questions concerning the information presented in the report or attachments, or if we may be of additional service, please contact our office at [REDACTED]

Sincerely,

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Asbestos AHERA Re-Inspection Survey

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SECTION 1. EXECUTIVE SUMMARY

On December 20, 2012, [REDACTED] performed a re-inspection for asbestos-containing building materials (ACBM) at [REDACTED] (the Site) located at [REDACTED]. The purpose for conducting the re-inspection survey was to comply with the AHERA three-year re-inspection requirement as outlined in U.S. Environmental Protection Agency (EPA) CFR 763.

[REDACTED] was provided with the previous AHERA three-year re-inspection report for the above-referenced site. Prior to conducting the re-inspection, [REDACTED] thoroughly reviewed the documentation provided to ascertain what building materials were inventoried and which were identified in previous investigations to contain asbestos.

Upon a complete review of the provided documentation, [REDACTED] was provided access to the Site to conduct a comprehensive visual walk-through inspection. On-site campus representatives provided access. [REDACTED] determined through this investigation that Site conditions, materials present, along with building configurations, have remained unchanged since the previous inspection conducted on April 14, 2010, with the exception of the following:

- Rooms 10-12, 17-19, 21-25: Floor tile abated and new carpet installed.

Friable materials located in this re-inspection included:

- None Noted

Non-friable materials located in this re-inspection included:

Material Type	Material Location	Material Disposition	Recommendation
9" Multicolored Vinyl Floor Tile (FLT-02)	Bldg. 1 – Office	Good	Abate upon upgrade of system or material
9" Multicolored Vinyl Floor Tile (FLT-02)	Bldg. 1 – Nurse's Office	Good	Abate upon upgrade of system or material
9" Tan Vinyl Floor Tile (FLT-01)	Bldg. 1 – K-1	Good	Abate upon upgrade of system or material
9" Tan Vinyl Floor Tile (FLT-01)	Bldg. 1 – K-2	Good	Abate upon upgrade of system or material
9" Tan Vinyl Floor Tile (FLT-01)	Bldg. 2 – Rm. 2	Good	Abate upon upgrade of system or material
9" Tan Vinyl Floor Tile (FLT-01)	Bldg. 2 – Rm. 3	Good	Abate upon upgrade of system or material
9" Tan Vinyl Floor Tile (FLT-01)	Bldg. 2 – Rm. 13	Good	Abate upon upgrade of system or material
9" Tan Vinyl Floor Tile (FLT-01)	Bldg. 2 – Rm. 14	Good	Abate upon upgrade of system or material
9" Tan Vinyl Floor Tile (FLT-01)	Bldg. 2 – Rm. 15	Good	Abate upon upgrade of system or material
9" Tan Vinyl Floor Tile (FLT-01)	Bldg. 2 – Rm. 16	Good	Abate upon upgrade of system or material

Materials identified in previous inspection efforts that were not able to be located for re-inspection included:

[REDACTED]

Dealing with Asbestos in Orange County Public Schools

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Material Type	Material Location	Explanation
9" Multicolored Vinyl Floor Tile (FLT-02)	Bldg. 1 – Lounge	Concealed by Carpet
9" Multicolored Vinyl Floor Tile (FLT-02)	Bldg. 1 – Vice Principal's Office	Concealed by Carpet
9" Multicolored Vinyl Floor Tile (FLT-02)	Bldg. 1 – Principal's Office	Concealed by Carpet
Pipe Elbow Fittings (ELB – 01)	Bldg. 1 – K Heater Closet	Removed
9" Tan Vinyl Floor Tile (FLT-01)	Bldg. 2 – Room 1A	Concealed by Carpet
9" Tan Vinyl Floor Tile (FLT-01)	Bldg. 2 – Room 1	Concealed by Carpet
9" Tan Vinyl Floor Tile (FLT-01)	Bldg. 2 – Room 4	Concealed by Carpet
9" Tan Vinyl Floor Tile (FLT-01)	Bldg. 2 – Room 5	Concealed by Carpet
9" Tan Vinyl Floor Tile (FLT-01)	Bldg. 2 – Room 6 CLC	Concealed by Carpet
Pipe Elbow Fittings (ELB – 01)	Bldg. 2 – North Heater Closet	Removed
Pipe Cover (P/C – 01)	Bldg. 2 – North Heater Closet	Removed
Pipe Elbow Fittings (ELB – 01)	Bldg. 2 – South A/C Closet	Removed
Pipe Cover (P/C – 01)	Bldg. 2 – South A/C Closet	Removed
9" Tan Vinyl Floor Tile (FLT-01)	Bldg. 3 – Rm. 7	Removed
9" Tan Vinyl Floor Tile (FLT-01)	Bldg. 3 – Rm. 8	Removed
9" Tan Vinyl Floor Tile (FLT-01)	Bldg. 3 – Rm. 9	Removed
Pipe Elbow Fittings (ELB – 01)	Bldg. 3 – North Heater Closet	Removed
Pipe Cover (P/C – 01)	Bldg. 3 – North Heater Closet	Removed
9" Tan Vinyl Floor Tile (FLT-01)	Bldg. 3 – Rm. 10	Removed
9" Tan Vinyl Floor Tile (FLT-01)	Bldg. 3 – Rm. 11	Removed
9" Tan Vinyl Floor Tile (FLT-01)	Bldg. 3 – Rm. 12	Removed
9" Tan Vinyl Floor Tile (FLT-01)	Bldg. 4 – Rm. 17	Removed
9" Tan Vinyl Floor Tile (FLT-01)	Bldg. 4 – Rm. 18	Removed
9" Tan Vinyl Floor Tile (FLT-01)	Bldg. 4 – Rm. 19	Removed
9" Tan Vinyl Floor Tile (FLT-01)	Bldg. 5 – Rm. 21-25	Removed
12" Tan Floor Tile (FLT-03)	Bldg. 5 - Rm. 20	Concealed by Carpet
Fire Rated Door (FRD-01)	Bldg. 1 – K - Heater Closet	Removed

Exact material locations can be found in Section 3. Field Notes of this document and includes all building material-specific information.



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Inspector: [REDACTED]
 Certificate No.: [REDACTED]

Material: 9" Multicolored Floor Tile
 Area: Bldg. 1
 Space: Vice Principal's Office

Material Code #	Friable	Accessibility	Type	Current Condition	Potential Condition	Approx. Amt of ACM	Priority Level	Cleaning Level	Response Action
FLT - 02	No	Low	Misc.	Good	Damage	160 S.F.	1 2 3 4 (5) 6	1 2 (3) 4 5	1 2 3 4 (5) 6 7

Justification: Periodic Surveillance
 Notes: Concealed by carpet

Implementation
 Start: 12/20/12
 End: 12/20/15

Inspector: [REDACTED]
 Certificate No.: [REDACTED]

Material: 9" Multicolored Floor Tile
 Area: Bldg. 1
 Space: Principal's Office

Material Code #	Friable	Accessibility	Type	Current Condition	Potential Condition	Approx. Amt of ACM	Priority Level	Cleaning Level	Response Action
FLT - 02	No	Low	Misc.	Good	Damage	270 S.F.	1 2 3 4 (5) 6	1 2 3 (4) 5	1 2 3 4 (5) 6 7

Justification: Periodic Surveillance
 Notes: Concealed by carpet

Implementation
 Start: 12/20/12
 End: 12/20/15

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Inspector: [REDACTED]
 Certificate No.: [REDACTED]
 Material Code # ELB - 01
 Friable No
 Accessability Low
 Type TSI
 Current Condition Removed
 Potential Condition Removed
 Approx Amt of ACM 0 Each
 Priority Level 1 2 3 4 5 6
 Cleaning Level 1 2 3 4 5
 Response Action 1 2 3 4 5 6 7
 Material: Pipe Elbow (fittings)
 Area: Bldg. 2
 Space: North Heater Closet
 Justification: Removed
 Notes: Removed
 Implementation Start: 12/20/12 End: 12/20/15

Inspector: [REDACTED]
 Certificate No.: [REDACTED]
 Material Code # P/C - 01
 Friable No
 Accessability
 Type TSI
 Current Condition Removed
 Potential Condition Removed
 Approx Amt of ACM 0
 Priority Level 1 2 3 4 5 6
 Cleaning Level 1 2 3 4 5
 Response Action 1 2 3 4 5 6 7
 Material: Pipe Cover
 Area: Bldg. 2
 Space: North Heater Closet
 Justification: Removed
 Notes: Removed
 Implementation Start: 12/20/12 End: 12/20/15

Explanation of Material Codes and Abbreviations

ACS – Acoustic Ceiling Spray	FIR – Fire Rated Brick
ACT – Acoustic Ceiling Tile	FLT – Floor Tile
ACP – Acoustic Ceiling Panels	FRD – Fire Rated Door
AIR – Air Cell	FUR – Furnace Pad
ASF – Asphalt	GAS – Gasket
ASP – Asbestos Paper	MAS – Mastic
BBM – Baseboard Mastic	MIS – Miscellaneous
BOI – Boiler Insulation	MOR – Mortar
BOL – Blown-in Insulation	P/C – Pipe Cover
BRK – Brick	PLA – Plaster
BUR – Built-up Roofing	SFL – Vinyl Sheet Flooring
CAP – Cement Asbestos Pipe	SFP – Sprayed-on Fireproofing
CAS – Cement Asbestos Siding	SOL – Soil
CIN – Cinder Block	STC – Stucco
CEM – Cement	TAP – Tape
CER – Ceramic	TAR – Tar
CUR – Curtains	RFS – Composite Roofing Shingles
DEB – Debris	RFT – Roofing Felt
DRY – Drywall	ROL – Rolled Roofing Material
DTM – Drywall Taping Mud	WOV – Cloth Joint Expansion
ELB – Pipe Elbow Fittings	WPY – Window Putty
EXP – Exterior Panels	

Priority Levels

These levels should be used to establish both immediate and long range plans to act on the recommendations. The priority levels were selected for on of the flowing options:

- Priority Level 1 – Isolate are, restrict access and respond as soon as possible.
- Priority Level 2 – Schedule response action as soon as possible, reduce potential for disturbance.
- Priority Level 3 – Schedule response action as soon as practical, reduce potential for disturbance.
- Priority Level 4 – Schedule response action as soon as practical.
- Priority Level 5 – Schedule response action upon upgrade of system or material.

Cleaning Levels

- Level 1 – Initial cleaning should be done as soon as possible and additional cleaning should be done once every two months until ACM is removed.
- Level 2 – Initial cleaning should be done as soon as possible and additional cleaning should be done once every six months until ACM is removed.
- Level 3 – The material is non-friable therefore initial cleaning is not necessary.
- Level 4 – Initial or additional cleaning is not required for this material.

Response Actions and Priority Levels

- | | |
|--------------|---------------------------------------|
| 1. Removal | 4. Encapsulation |
| 2. Repair | 5. Operations and Maintenance Program |
| 3. Enclosure | 6. Periodic Surveillance |

Appendix G: Survey Questions

In order to have complete statistical data from all districts, the Grand Jury sent the survey questions below to the OC Department of Education and to the 27 OC school districts. The Jury designed the survey to assess each district’s current scope of asbestos issues, the ability of each district to manage construction work that might involve hazardous materials, district awareness of and compliance with AHERA regulations, and district communication with its stakeholder community. The Grand Jury designed the survey to elicit straightforward Yes/No/Not Applicable (N/A) or numerical responses to facilitate tabulation of the results.

The Grand Jury instructed responders to answer all questions including all sub-parts and to check only one box per question. Responders were also instructed that within the scope of this survey, a policy exists only if it is a *written* Board of Trustees policy, procedure, or other Board instruction or as a *written* District Superintendent policy/procedure/instruction.

1. Facility management:

- a. Do you have at least one full time district person with facilities management as his/her sole responsibility?
 Yes No N/A
- b. Do you have at least one part time person with facilities management as his/her responsibility?
 Yes No N/A
- c. Is the position currently staffed? Yes No N/A

2. Facilities records:

- a. Do you maintain a database with key information for each facility/structure for each campus including date of construction, dates of major modifications and/or repairs to each facility/structure, and dates of last AHERA inspections?
 Yes No N/A
- b. Do you maintain the above database as paper records, or do you store the database electronically? Paper Electronic Both N/A
- c. Are such electronic records, if they exist, available on-line on your web site?
 Yes No N/A

3. Facilities plans:

- a. Do you have a facilities construction plan listing planned new facilities?
 Yes No N/A
- b. Do you have a facilities construction plan listing planned modifications and/or major repairs to existing structures? Yes No N/A

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- c. Does your facilities plan include any efforts that will require abatement of known hazardous materials on the work site such as asbestos, lead, mold, or chemical contamination?
Yes No N/A
- d. Is any of the planned construction work specifically directed toward asbestos or other hazardous materials abatement and not part of a larger effort?
Yes No N/A
- e. Does the facilities plan include projected/scheduled dates for the work?
Yes No N/A
- f. Does the facilities plan include rough cost estimates for each work effort?
Yes No N/A
- g. Does the plan identify funding source(s) for the planned work?
Yes No N/A
- h. Is your facilities construction plan available on-line on your web site?
Yes No N/A

4. Construction management:

- a. Do you have a written policy to do facilities construction, other than emergency repairs, only when students are not present on the campus?
Yes No N/A
- b. Do you have a written policy to separately contract for facilities hazardous materials inspections, for hazardous materials abatement, and for the actual construction once any hazardous materials are abated?
Yes No N/A
- c. Do you have a written policy to limit the amount of construction/repair work in any given year to a scope that you have resources to manage effectively?
Yes No N/A
- d. Do you have a written policy requiring your construction contracts to have explicit schedule performance requirements?
Yes No N/A
- e. Do you have a written policy requiring clearly scheduled intermediate milestones/checkpoints in each contract that allow you to detect work falling behind schedule?
Yes No N/A
- f. Do you require members of your own facilities management team to personally walk through/inspect construction work as it is being done?
Yes No N/A
- g. Do you have a written policy to notify your staff and the parents and others in your community when you plan to begin and finish construction work on one of your campuses?

Yes No N/A

h. If so, do you specifically address any abatement work that will be part of the construction in such communications?

Yes No N/A

i. Do your written communications with parents and others in your community include translations of key messages into one or more of the non-English languages used by parents/families in your community?

Yes No N/A

5. Training and accreditation:

a. Have you appointed an AHERA Designated Person for each school in your district?

Yes No N/A

b. Have you provided the EPA-required training for such persons?

Yes No N/A

c. Do you conduct regular training on hazardous materials with all your employees including administrative and teaching staff and facilities staff?

Yes No N/A

d. Do you have and enforce a policy of hiring only DIR-certified contractors for all construction/repair work?

Yes No N/A

6. AHERA inspections on your campuses:

a. Do you have current AHERA inspection reports on all of your campuses?

Yes No N/A

b. Do you keep a copy of the results of the AHERA inspections in a central location?

Yes No N/A

c. Do you keep a copy of the results of the AHERA inspections for a particular campus available at each campus main (or other easily accessible) office?

Yes No N/A

d. Do you keep a copy of the results of the AHERA inspections in a central location and a copy available at each campus main (or other easily accessible) office?

Yes No N/A

e. Do you post and maintain current AHERA reports on your district web site?

Yes No N/A

7. AHERA status:

a. Do any of your campuses currently have asbestos abatement work in progress?

Yes No N/A

b. If so, on how many campuses?

Number of Campuses _____ N/A

- c. What is the number of your campuses with AHERA reports that indicate the presence of asbestos materials in a currently safe encapsulated form not included in the number in response to (a) above?

Number of Campuses _____ N/A

**OFFICE OF INDEPENDENT REVIEW:
WHAT'S NEXT?**



GRAND JURY 2015-2016

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EXECUTIVE SUMMARY

The Orange County Board of Supervisors (Board) created the Office of Independent Review (OIR) in 2008, after public outcry over an in-custody beating death of an inmate in an Orange County jail and alleged inaction by jail deputies responsible for the safety of the inmates. The Board's 2008 ordinance called for the OIR to act as independent reviewer of the OCSD's internal investigations into in-custody deaths and complaints of employee misconduct, in order to ensure thorough, fair, and effective investigations. The intent of the Board was to restore public trust in the Orange County Sheriff-Coroner's Department (OCSD).

Despite strong cooperation and high marks from the OCSD, the Board criticized the OIR over the years. Many Supervisors were dissatisfied with the detail and quantity of OIR reports. Some felt its independence was impacted by its closeness to the OCSD. And some judged that the OIR had failed to act as an independent investigator to find OCSD problems before they became critical incidents or public controversies, even though, in the Grand Jury's opinion, this fell outside the original purpose and intent stated in the 2008 OIR ordinance.

The breaking point for the Board was the national reaction to the jailhouse informant controversy that arose in a high-profile mass murder trial in Orange County in 2014 and 2015. The Board felt the OIR had failed it and voted unanimously by straw vote to defund the OIR in the June 2015 budget cycle. Some Supervisors saw no value in the OIR; others wanted to shutter it to make way for a bigger, better OIR. Two of the three OIR employees departed around this time.

After both the U.S. Department of Justice and the OCSD raised concerns about leaving the OCSD with no oversight, the Board reversed course and restored funding. Concurrently, it created an ad hoc committee to design a new OIR model. The Board passed the resulting amended OIR ordinance in December 2015. In March 2016, the OIR Executive Director resigned, leaving the OIR effectively dormant until the County acquires new staff to implement the 2015 OIR ordinance. In the interim, the Board has the option to bring in temporary staff, if an urgent need were to arise.

The 2015 ordinance greatly broadened the scope of the OIR, redefined its purpose, and expanded its oversight responsibilities from a single County agency to five, adding the Office of the District Attorney (OCDA), Public Defender, Probation Department, and Social Services Agency to the OCSD. Both the OCDA and the (now previous) Public Defender have voiced strong opposition to being added to the OIR's purview, on the basis of confidentiality concerns, legal precedent, and existing law that prevents outside interference with the ability to effectively try cases. The Public Defender's opposition may be resolved through hiring conditions placed on the new Public Defender by the Board, now that the previous Public Defender has taken a judicial appointment. The OCDA's remaining opposition could be a serious impediment to effective OIR review of the OCDA.

The Grand Jury has provided findings and recommendations related to the coming implementation of the new OIR. They involve operational aspects that need to be addressed, now that the Board has made the policy decisions in the 2015 ordinance. Notable recommendations call for evaluating the vulnerability of the OIR to political influence and implementing mechanisms to protect the independence of the OIR, and urging the OCDA and OIR to establish an operational relationship by including an OIR staff attorney as an outside and independent member of the OCDA's Confidential Informant Review Committee.

The Grand Jury is cautiously optimistic that the new OIR will become operational in fiscal year 2016-2017, and continue to help Orange County earn the public's trust in its criminal justice system.

BACKGROUND

Origins of the Orange County Office of Independent Review

The Orange County Board of Supervisors (Board) established the Orange County Office of Independent Review (OIR) in February 2008, partly in reaction to the October 2006 in-custody beating death of an Orange County jail inmate by other inmates. The media coverage that followed included allegations that some of the jail deputies had failed to take actions that might have prevented the death, thereby damaging the public's trust in the Orange County Sheriff-Coroner's Department (OCSD).

Unrelated to the in-custody jail death, the then Sheriff-Coroner was indicted on federal charges in October 2007 and resigned in January 2008. The Board appointed an Acting Sheriff and simultaneously looked for an independent public safety oversight mechanism that could add transparency to the OCSD's internal investigations and help restore public confidence in the OCSD. They found a promising model already in place in Los Angeles County.

Los Angeles County had adopted an oversight model in 2001, when it formed its Office of Independent Review to monitor and advise the Internal Affairs Group in its Sheriff's Department. That model appeared to be applicable to the OCSD, which has a similar internal affairs group called the Internal Affairs Unit (IAU). The IAU conducts investigations of alleged misconduct by OCSD employees, with appropriate due process, and in accordance with the Peace Officer's Bill of Rights.

The Board hired a veteran of the Los Angeles County's Sheriff's Department as the new Orange County Sheriff in June 2008, and a veteran of the Los Angeles County OIR to be Executive Director of Orange County's OIR in September 2008. The two shared a professional history in Los Angeles County and mutual support of the OIR concept there. As a result, the OIR launch was successful and quickly operational in Orange County.

2008 Orange County OIR Ordinance

The February 2008 OIR ordinance stated that the purpose of the OIR was to monitor, assist, oversee, and advise the Sheriff-Coroner in the investigation of:

- Selected internal and citizen complaints about the actions or inaction of peace officers or custodial officers in the OCSD, and
- Incidents of death or serious injury to persons in the custody of the OCSD.

The 2008 ordinance made the OIR responsible for ensuring that the OCSD's response to these matters was thorough, fair, and effective. The 2008 ordinance described OIR responsibilities including the following:

- Provide periodic status reports to the Board and OCSD management;
- Provide periodic reports to the public concerning OIR activities and findings as the OIR deems proper and appropriate;
- Provide ongoing counsel for the initiation, structuring, and development of investigations conducted by the OCSD's IAU;
- Respond to scenes of investigations, as needed and appropriate;
- Participate in confidential meetings and proceedings to monitor cases in real time;
- Provide counsel to the IAU to ensure thorough, unbiased, and impartial fact-finding and consistent conclusions;
- Review and critique completed investigations and conclusions of the IAU;
- Analyze selected IAU investigations to determine whether OCSD policies, practices, and procedures should be revised to prevent future occurrences of similar allegations of misconduct;
- Propose revisions of implicated policies, practices, and procedures; and
- Propose independent recommendations regarding investigation outcomes, when warranted. (Article, Codified)

Note: This is a partial list of responsibilities. The full text may be found in Appendix C.

Launching OIR Operations

The OIR was budgeted at \$750,000/year, funding an Executive Director and, as deemed necessary by the Executive Director, staff attorneys and administrative support staff. As the economy contracted in late 2008 and forced County belt-tightening, the OIR budget was reduced to \$425,000. Staffing was limited to the Executive Director, one Investigations Analyst with law enforcement experience, and one Executive Secretary. All three were hired in the summer and fall of 2008, and OIR staffing remained constant until 2015.

To enhance the independence of the OIR, the ordinance specified that the Executive Director and the staff attorneys would be independent contractors, rather than county employees, and would have no reporting relationship within the OCSD chain of command. The Executive Secretary was a County employee. The 2008 ordinance required that the Executive Director be an attorney having at least three years' experience in the oversight of law enforcement personnel and departments.

To ensure OIR access to confidential documents, data, and meetings within the OCSD, the 2008 ordinance directed the Executive Director to establish an attorney-client relationship with the County of Orange and the OCSD. Such a relationship obliged the OIR to preserve the confidentiality of information revealed during a review of internal OCSD investigations. The Grand Jury considers this assurance of confidentiality through attorney-client privilege as crucial to the Sheriff's decision to grant this level of access to the OIR.

At the request of the Board, one of the first acts of the new OIR Executive Director was to submit an OIR operations plan and proposed budget. The response took the form of an October 7, 2008 memo and PowerPoint presentation to the Board. (Connolly, OIR Operations) (Connolly, County) It addressed how the OIR would operate, including these important points:

- *Integration into OCSD's review process for critical incidents, use of force, and policies and procedures.* Importantly, the 2008 ordinance does not provide funds or staff for independent OIR investigations. Instead, its investigative function is integrated into the OCSD's existing internal investigations review process.
- *Full-time oversight commitment.* The OIR provides full-time oversight and real-time response to critical incidents, which includes responding to the scene.
- *Access.* The attorney-client relationship between the OIR, the County, and OCSD allows access to investigation files, records, and meetings under full confidentiality.
- *Independence.* The OIR provides an independent voice and outside perspective in OCSD internal investigations and critical incident reviews. OIR staff (excluding the Executive Secretary) are independent contractors, not County employees, and not part of the OCSD chain of command. This allows them to maintain objectivity and arms-length relationships with both the Board and the OCSD, and increase public confidence.
- *Transparency.* The OIR serves as a conduit between the public and the OCSD. It represents the public interest and provides insights to the public on the OCSD's actions.
- *Monitoring.* The OIR monitors officer misconduct complaint cases from start to finish, ensuring that the OCSD process is thorough, fair, and effective.
- *Consulting.* The OIR works with the OCSD on potential reforms in policies, training, systems, and protocols.

- *Coordinating.* The OIR acts as liaison between OCSD and outside groups, such as the County government, the criminal justice system, employee unions, community groups, and the public.
- *Reporting.* The OIR provides reports to the Board at their meetings, responds to individual inquiries from Supervisors, and issues written status reports. Some of the written reports are released to the public as well, through the OIR web site, while other reports may be confidential and protected by the attorney-client privilege.

Scope of This Report

This report covers the OIR from its creation in 2008, through a near-cancellation in June 2015, followed by the creation of a new OIR model in December 2015 with a five-fold expansion of scope and major new policy directions. With that as context, the report takes a detailed look at the recent revisions in the OIR's mandate and model (2008 vs 2015), and the motivations for, and concerns about, the expansion of the OIR's reach.

Prior Orange County Grand Jury Reports Mentioning the OIR

Seven Orange County Grand Jury reports, and/or responses to those reports, have mentioned the OIR since its inception in 2008. Five of the reports focused on the conditions of the county jails, the other two addressed ethics concerns, and all only peripherally mentioned the OIR. Table 7 in Appendix F lists all the OIR-related findings and recommendations from those reports, as well as the responses to those recommendations from the OIR, the Board, and the OCSD (Orange County Grand Jury Reports, 2008 to present). Several of the findings and recommendations of those reports, and responses, are discussed later in this report.

Reason for the Current Focus on the December 2015 Expansion of the OIR

The 2015-2016 Grand Jury focused this report on the expansion of the scope of the OIR that occurred in the middle of this Grand Jury year in December 2015. The Grand Jury judged this the most significant of a series of changes to County oversight bodies and mechanisms in calendar year 2015.

During that year, the Board made changes to four oversight entities – the Fraud Hotline, Internal Audit, Performance Audit, and the Office of Independent Review. The Board's actions led to leadership changes in all four in addition to the expansion of the OIR's reach. The Board took the following actions:

- Replaced the Executive Director of Performance Audit, naming the Internal Audit Executive Director as interim for Performance Audit as well.

- Shifted the Fraud Hotline from Internal Audit to County Counsel, with the Auditor-Controller assisting County Counsel.
- Moved Internal Audit from reporting to the Board to reporting to the Auditor-Controller, aligning the County with standard practice in other California counties. In the process, the Executive Director was replaced by a manager in the Auditor-Controller office.
- Made the interim Performance Audit Executive Director permanent, after which he left for another position in Los Angeles County. A new Executive Director has not yet been chosen.
- Renewed the OIR Executive Director's contract on a month-to-month basis in 2016. The Executive Director resigned in March 2016. The County has not hired a replacement yet for the new OIR.

The Grand Jury viewed the expansion of the OIR as particularly worthy of study, compared to the less fundamental changes in the other oversight entities. Concerns about the potential difficulties in implementing the expansion, and whether the expanded OIR could achieve its goals once implemented, are the reasons for focusing on the expansion in this Grand Jury report.

METHODOLOGY

In the course of its investigation for this report, the Grand Jury interviewed Orange County officials and staff, and representatives of public and private Orange County organizations. The Grand Jury also conducted a literature search, which led to reviewing previous Orange County Grand Jury reports, press coverage of the Orange County government and criminal justice system, and various Orange County government reports, documents, and web sites.

INVESTIGATION AND ANALYSIS

OIR Operations from 2008 through 2015

From 2008 until December 2015, when the Board of Supervisors (Board) passed the amended 2015 OIR ordinance, the OIR's sphere of operation was limited to a single law enforcement agency, the Orange County Sheriff-Coroner's Department (OCSD).

OIR Reports

The OIR published reports and briefed the Board and the OCSD leadership periodically on its activities with the OCSD. The Executive Director's contract initially called for "periodic status reports" on page one of the contract, and "monthly summary reports" to the Board on page five. The Board amended "periodic" to "quarterly" on page one, but left "monthly summary reports" on page five, before approving the contract as amended. There was no mention of the

requirement on page five during the discussion of the amendment, so it's possible the Board was unaware of the apparent conflict that the amendment created. (Item # 21, Clerk)

Taken literally, the amended contract terms called for four quarterly status reports per year plus twelve monthly summary reports, or a total of sixteen reports a year. The OIR Executive Director interpreted the contract as calling for quarterly status reports. In addition, he anticipated writing reports to the Board about individual matters and outcomes. (Connolly, OIR Operations) The OIR published twenty-two public reports total, starting in October 2008 and ending with the March 2015 report.

Some OIR reports involve litigation against the County, which typically means they have to remain confidential. (Santana, County's Office) OIR management estimated that the OIR provided fifteen to twenty confidential reports to the Board and the OCSD since 2008, and a significantly larger number of confidential briefings to individual Supervisors and the OCSD leadership. Due to their confidential content, there are no public records of these reports and briefings.

For the OIR to meet the literal contract requirements for sixteen reports a year for the seven years from 2008 through 2015, it would have had to issue 112 reports, or ninety confidential reports in addition to the known twenty-two public reports. If the Board had instead intended for the OIR to publish just the four quarterly reports a year, as the Board had amended the contract and the Executive Director had interpreted it, the OIR would have had to issue twenty-eight reports, or just six confidential reports in addition to the twenty-two public reports.

OIR Reports	2008	2009	2010	2011	2012	2013	2014	2015
January						✓	✓	
February					✓			
March								✓
April		✓				✓		
May		✓✓	✓		✓		✓	
June								
July		✓						
August		✓			✓			
September		✓				✓		
October	✓	✓		✓	✓		✓	
November								
December				✓				

Table 1. Dates of public OIR reports from late 2008 through 2015

But the distribution of the OIR's twenty-two public reports over the period from late 2008 through 2015 does not meet the requirement for quarterly reports. The OIR published four or more public reports in only two of the seven years. (See Table 1 above.)

The public reports cited the following OIR accomplishments:

- Decentralized response and disposition of citizen complaints with increased involvement of OCSD supervisors, resulting in fewer Internal Affairs Unit cases;
- Shortened the time to complete Internal Affairs Unit investigation;
- Performed the tasks of embedded outsider overview;
- Reported findings and outcomes of investigations;
- Analyzed problem situations in other law enforcement agencies and jails, in and outside Orange County and applied the lessons learned to OCSD operations to anticipate and avoid similar problems in Orange County in the future;
- Developed a standard decentralized discipline practice, involving OCSD executive management in reviewing disciplinary issues before final decisions by local unit leadership, to promote consistency, then used outcomes to educate all levels as to lessons learned;
- Provided assistance and outside review to another County agency in response to a critical incident;
- Acted as an independent and outside monitor of the OCSD, which was viewed as a positive factor by the U.S. Department of Justice in its investigation of Orange County jail conditions and operations following the 2006 inmate in-custody death;
- Used the complaint process, regarding employee performance and conduct, to identify training needs and enhancements;
- Influenced policy/procedure, critical incident management, and processing of employee misconduct and performance complaints, especially use of force.

Independent or Too Close?

Despite the successes, some County officials interviewed were skeptical of the relationship between the OIR and the OCSD. Even though the OIR's professional staff were neither part of the OCSD's chain of command nor employees of the County, some County officials believed the OIR was too close to OCSD leadership, and therefore not sufficiently independent and objective to inspire public confidence in the OCSD's policing of its own employees.

The 2011-2012 Grand Jury found that there was a perception that the OIR was overly influenced by the OCSD. It found that the co-location of the OIR office with the OCSD offices added to that perception, and recommended that the OIR be relocated to the Hall of Administration. (2011-2012 Grand Jury, Detention, Part I) The Board and OIR disagreed partially with the finding and rejected the recommendation in their September 2012 responses:

Response to Finding: ... [Board] ... believes that OIR's physical location helps promote the access and regular contact that contribute to its monitoring function...

Response to Recommendation: ... The location of the office is critical to OIR's ability to respond in person to critical incidents, consult regularly with OCSD decision-makers, and review OCSD operations, files, and records in an unfettered way. (County, Response)

These responses defended the practice of the OIR sharing office space with the OCSD, but they did not actually address the issue of undue influence.

The current Board came down on the other side of this issue, voting 3 to 2 to relocate the OIR from the Sheriff's Department to the Hall of Administration, where the Board resides, as part of the expansion of the OIR in December 2015. With changes in the Board's makeup, and three more years' experience with the OIR, the change in direction is not as surprising as it might first appear.

In addition to the physical closeness, critics of the OIR were also concerned about the closeness of the working relationship between the OIR and OCSD. The interaction between the OIR and OCSD can be compared to two extremes. At one extreme, an arms-length or even adversarial relationship could emphasize and reinforce the independence of the OIR's role as a reviewer, while at the same time limiting the OIR's effectiveness by discouraging openness and cooperation in the relationship. Access to internal documents and procedures could be limited in such a relationship, for example, if the Sheriff were to refuse to accept an attorney-client relationship with the OIR. At the other extreme, an overly-friendly relationship could allow the reviewer to get open access to OCSD documents, data, and processes, but raises the question of whether the extreme closeness could bias the reviewer's judgment.

The Grand Jury believes that somewhere between the extremes is the relationship maintained by the OIR and OCSD for the past seven years: professional and buttoned up, but also cooperative behind an attorney-client agreement that allowed sharing confidential information. A strong argument can be made that this kind of cooperation is essential for an effective oversight program. However, this, and the co-location of the OIR with the OCSD, played into the view of some that they were too close for true independence.

The voluntary cooperation of the OCSD was essential to making the OIR effective. OCSD senior management could have resisted the involvement of the OIR in its internal investigations, for instance, by citing California Government Code Section 25303, which directs that "The board of supervisors shall not obstruct the investigative function of the sheriff of the county nor shall it obstruct the investigative and prosecutorial function of the district attorney of a county." Even without that legal argument, the OCSD senior management could have resisted the review of the OIR, given that the head of the OCSD is an elected official answering to the citizenry and not to

the Board of Supervisors or County departments reporting to the Board. (Cuniff, Orange ... vote) (Aguilar, Orange ... new model)

OIR Performance Review

Over the years, the current Sheriff has been a consistent and strong supporter of the OIR as an important catalyst for transparency and public confidence in the OCSD and its internal operations. (Santana, Once) (Cuniff, O.C.) (Gerda, OC) (Cuniff, Divided) The Sheriff took office in the midst of the in-custody death controversy and the indictment and resignation of the previous Sheriff. Given the effect those incidents had on the public perception of the OCSD, the incoming Sheriff welcomed OIR oversight as a means to help re-establish public confidence while simultaneously responding to concerns raised by the U.S. Department of Justice. (Santana, Report)

Beyond that, when the Grand Jury asked OCSD management about the OIR, most described the OIR Executive Director as an outsider who had gained their acceptance and trust, but who always stayed within the parameters of the OIR's role. In their view, the OIR provided a citizen's perspective of the policies, procedures, and practices of the OCSD, which is clearly different from the law enforcement insider's view. They found this diversity of perspective healthy and helpful.

In contrast to OCSD management, there has been some discontent about the OIR within the rank and file in the Department. Grand Jury interviews revealed that some OCSD deputies and staff members see the OIR as an extension of OCSD management and a source of harsher disciplinary outcomes, neither of which were viewed positively. The interviews also indicated that other staff members have expressed concerns about the OIR focusing solely on the investigation of misconduct by the rank and file. They see no independent review of the behavior of OCSD command staff or management. This is true, but it is an artifact of the 2008 ordinance, which specifies OIR involvement on misconduct investigations conducted by the Internal Affairs Unit (IAU), and critical incidents involving death or serious injury to citizens under OCSD custody. Command staff and management are rarely if ever the subjects of IAU investigations, because they are not involved in direct law enforcement activities that involve the use of force or other interactions with suspects or inmates under custody.

Besides the OCSD rank and file, some members of the Board have also been critical of the performance of the OIR over this period. It is useful to explore what went wrong with the OIR in the view of these Board members, and why they decided the OIR needed new leadership and a new mandate.

The Board of Supervisors (Board) membership turned over completely between 2008 and 2015. Some of the current Board members do not appear to know or do not recall fully the parameters

of the OIR as described in the 2008 ordinance. As new Supervisors came into office, they developed their own expectations of the OIR, and some projected expectations onto the OIR that were not contained in the original ordinance. (Santana, Report)

Even some Supervisors who voted to pass the ordinance in 2008 later expressed expectations not supported in the text of that document (Santana, Report). The 2011-2012 Grand Jury report found that discussions with the Board led to the OIR experiencing inconsistency in expectations, direction, and evaluation (Orange County Grand Jury, 2011-2012, Part I). Expectations were inconsistent among the Supervisors, and also inconsistent in many cases with the OIR responsibilities as defined in the original 2008 ordinance. The OIR and Board submitted a formal response to the finding, suggesting that better communication between the OIR and the Board had improved the situation. (County, Response).

In reaction to the inconsistent expectations of the Supervisors, the OIR made a point of including the purpose and intent of the OIR, as expressed in the 2008 ordinance, in the introductory material of most reports issued by the OIR. This was intended to reinforce what the Supervisors should and should not expect from the OIR.

Despite the effort to clarify the formal mission and charter of the OIR, differences in expectations continued unabated throughout the next seven years. For instance, more than one Supervisor in this period expected the OIR to carry out its own independent investigations to uncover emerging problems in the operations of the OCSD. These Supervisors expected the OIR to bring those problems to the Board's attention immediately, and certainly before the press could report on them to the public. (Cuniff, Board)

Supervisors with this expectation believed that the information would give them the opportunity to intercede proactively with the OCSD to resolve problems before they became high-profile critical incidents or public controversies. (Gerda, OC) (Cuniff, O.C.) (Cuniff, Todd) The Grand Jury agrees that identification of potential and/or emergent problems is highly desirable, especially if preventive action can be implemented in time to prevent a first occurrence. However, it is the view of this Grand Jury that the OIR was neither resourced nor charged with conducting independent investigations in the 2008 ordinance.

The 2008 ordinance defined a narrow focus for the OIR that is almost exclusively reactive, including:

In coordination and cooperation with the Sheriff-Coroner:

- (i) Monitor, as necessary and appropriate, investigations arising from complaints or custodial deaths or injuries;
- (ii) Respond, as necessary and appropriate, to scenes of investigations;

- (iii) Have access to, and participate in, confidential meetings and proceedings in order to monitor cases in real time;
- (iv) Provide advice and counsel to the I.A. Unit so as to ensure a thorough, unbiased, and impartial fact-finding process and consistent and appropriate conclusions; and
- (v) Review and critique completed investigations and conclusions of the I.A. Unit.

Some County officials judged OIR performance as poor due to high-profile OCSD incidents occurring during the OIR's watch since 2008 (Spitzer, Stephen). Events including the jailhouse informants' controversy in 2015 and 2016, and the escape of three inmates from the Men's Central Jail in January 2016, were not the subject of any OCSD internal investigation until after they occurred. The OIR, in its role as after-the-fact monitor and reviewer of on-going OCSD internal investigations, had no visibility into these incidents until after they occurred, and OCSD's internal investigations had begun. There was no opportunity for the OIR to provide early warning to the Board regarding events like these. The OIR was being asked to provide information that was effectively outside its scope of work.

Even if the 2008 ordinance had called for the OIR to identify developing OCSD problems, and provided the resources for independent investigations and an early warning system, some problems would inevitably have escaped the vigilance of the OIR. For instance, it is not clear that the OIR could have discovered the questionable use of jailhouse informants given that it has taken years of research and investigation by the Public Defender, thousands of pages of motions and evidence, and months of court hearings and testimony to uncover the issues. In another example, OCSD senior leadership has said that the OIR could not be expected to predict jail escapes (Schwebke, After). In any case, the 2008 ordinance did not call for the OIR to provide this kind of predictive/preventive service beyond making recommendations for policy and procedural changes, based on OIR review of previous OCSD internal investigations, with the expectation that those corrective actions, when implemented, would avoid a recurrence of the same problem.

In interviews with the Grand Jury, other Supervisors have been critical of the OIR, but not over its performance. Instead, they have questioned whether the OIR is needed at all. They suggest that the OCSD's leadership and Internal Affairs Unit, along with existing OCSD policies and practices, are sufficient for properly dealing with internal and citizen complaints against OCSD officers. They regard OCSD employees as professionals who can and should be trusted to carry out internal investigations in a professional and fair manner, and thus do not need independent review by the OIR or anyone else. Other Supervisors disagree, suggesting that it is reasonable to trust professionals to do their jobs, but at the same time it is necessary to verify their results. The OIR fulfills this verification role as an independent reviewer.

Mixed Reviews by the Supervisors over the Years

In May 2009, less than a year after the OIR began operations, *The Orange County Register* reported that some Supervisors had significant misunderstandings about what the OIR was set up to do. This came to light when the OIR reported on incidents that occurred during two Board of Supervisors' meetings. The report pertained to controversial behavior exhibited by some Deputy Sheriffs during sessions in late 2008 and early 2009 related to public hearings on gun permits. In one meeting, Deputy Sheriffs exchanged text messages disparaging Supervisors and gun activists. In another meeting, there was use of surveillance cameras and a heavy security presence by OCSD that some felt was inappropriate.

Some Supervisors expected the OIR to base its report on its own independent investigation into the incidents. One Supervisor was looking for the OIR to act like a one-man grand jury. Another felt the resulting OIR report more closely resembled a public relations report than an independent investigation.

This is a good example of expectations not supported by the 2008 ordinance. Some Board members were clearly expecting an independent OIR investigation, rather than an independent OIR review of the Sheriff's investigation, as called for in the 2008 ordinance. Contrary to that expectation, a high-level staffer to another Supervisor felt that the OIR report was exactly in line with the OIR's call to be an independent reviewer, not an investigator. In the article, the OIR Executive Director acknowledged that he needed to do a better job communicating the role and limitations of the OIR. OIR reports are intended to inform the public about the Sheriff Department's response to the incidents which, in this case, included verbal reprimands and policy changes. (Santana, Report)

A year later, in June 2010, the Board discussed eliminating the OIR due to continued constraints on the County budget. Some Supervisors had expected the OIR to be more independent of the OCSD than it seemed to be. Others had expected the OIR to make its activities more visible to the public. Another Supervisor, however, felt that the OIR was doing a great job. In the end, the OIR remained funded, but the Board said it would set performance goals for the OIR. (Muir, Office)

In August 2011, when the OIR Executive Director's contract came up for renewal, the Board chose to extend the contract for less than the requested three years, and declared it would review the OIR performance in six months. The Supervisors asked for more regular reporting to both the public and the Board. The press reported that the contract extension was for six months (Santana, County's Office), but a County insider told the Grand Jury that it was actually extended for one year.

What was the OIR's record on reporting at that point in 2011? As noted earlier, the OIR web site has links to seven public reports from 2009, a single OIR status report from May 2010, and no reports in the rest of 2010 or 2011 until October 2011. The May 2010 report, however, was a detailed 42-page annual report covering 2009 and part of 2010, including an in-depth twelve-page chapter on the 2006 in-custody beating death case of an inmate, and systemic reforms resulting from it. Other chapters in this report cover the mission of the OIR and frequently asked questions, the OIR role in internal discipline with a number of masked case studies, statistics, and systemic reforms; the OIR role in internal review with masked case studies; and pending projects for the OIR.

Despite the lengthy May 2010 report, the Board was dissatisfied with OIR reporting a year later, in August 2011. The fact that there had been no public reports in the fourteen months after the May 2010 report, and the uneven distribution of reports across the three-year period from 2009 through 2011, may have played a role in the Board's dissatisfaction. It is also possible that it was difficult to find or retrieve the public reports on the OIR web site from time to time. There was a June 2012 press report claiming the OIR had never issued any public reports at all (Santana, Once), which was incorrect, as evidenced by press coverage of a second public OIR report in August 2009 (Saavedra, Complaints). There was also a reference to broken links on the OIR web site for all reports since 2012, as of June 2015 (Cuniff, Todd).

After the OIR responded with two reports in late 2011 and two more reports in the first half of 2012, the Board decided that the OIR had done a better job keeping it informed, including a well-received review of two incidents in the Probation Department. (The Supervisors had amended the Executive Director's contract in 2010 to extend the OIR's reach to the Probation Department after some high-profile cases there.) The Board did not question funding the OIR for the 2012-2013 fiscal year and extended the Executive Director's contract in August 2012. The OIR published two more reports in the second half of 2012, three reports in each of 2013 and 2014, and one in 2015.

An OIR Case Report Example

It is useful to consider an OIR case that was covered in some detail in one of the OIR reports during this period. Curiously, both a County official and a local resident held up this case during Board meetings in 2015 as an example where the OIR had failed to do anything, but the February 28, 2012 OIR report indicates otherwise. (Cuniff, Board) (Cuniff, Split) (Gerda, County) (Gerda, Supervisors)

The report included coverage of the tragic officer-involved shooting death of an unarmed Marine Sergeant, which occurred three weeks prior to the publishing of the report in February 2012. (Connolly, OIR Activity, 28 Feb. 2012) As with all officer-involved shootings, the OIR joined the District Attorney's investigation at the scene and monitored the subsequent investigation into

the legality of the Sheriff Deputy's conduct. It also monitored the Sheriff's critical incident review protocol, which involves examining individual performance and accountability, and also tactics, policy, training, and equipment.

During the course of this incident, OCSD staff made some questionable decisions on when to release information to the public. Worse, the information released was incorrect. The OIR discussed these concerns with the OCSD, leading to changes in policies and protocols, so that appropriate and correct information would be released in a timely manner during future critical incidents. The effectiveness and professionalism of the public briefings during the jail escape incident in January 2016 may have been a reflection of some of the lessons learned in the 2012 incident.

This is an example of an incident that created a large County liability because of the death, even though the Deputy Sheriff involved was eventually cleared. The District Attorney's report said that he acted reasonably and with sufficient force. (Santa Cruz, O.C.) Still, the death eventually resulted in litigation costs plus a settlement for a combined cost of over \$4.4 million to the County. (Goffard, O.C.)

One reason the OIR reviews cases like this is to look for changes to OCSD policies, procedures, and training that could improve the handling of similar events in the future, or better still, avert such tragedies altogether. Besides saving lives, implementation of such changes could also reduce the County's liabilities, by avoiding incidents that could have led to costly settlements, thereby allowing funds otherwise consumed by settlements to be used for other, more constructive County needs. It is clear that the OIR helped improve post-incident policies and practices in this case, but less clear that there were changes that could avert this kind of death in the future.

2015: Supervisors Lose Confidence in the OIR

In early 2015, a relatively low-profile legal controversy that had developed slowly over two years suddenly became a high visibility issue, receiving both local and national attention, during a highly publicized mass murder trial in Orange County. In the end, this controversy caused the Board to lose confidence in the OIR.

This controversy involved the use of jailhouse informants by the OCDA and its law enforcement partner, the OCSD, to gather evidence for criminal prosecutions. The controversy affected at least half a dozen cases in the Orange County criminal justice system in 2015, sidetracking the sentencing phase of the mass murder trial, disrupting other on-going trials, and upsetting previous convictions. (Cuniff, Amid) (Saavedra, Former) (Saavedra, Watchdog) (Graham, O.C.) This controversy had the dual effect of weakening the public confidence in the Orange County criminal justice system (Chemerinsky, Joint), while also weakening the Board's confidence in

the OIR. (Aguilar, Orange ... new model) (Cuniff, O.C.) (Cuniff, Orange ... vote) (Gerda, OC) (Gerda, DA)

The event during the jailhouse informant controversy that attracted the most national attention was a ruling to dismiss the entire District Attorney's office from one high-profile trial. The judge's ruling resulted from evidence that serious violations by the prosecution had deprived the defendant of due process in the past and could prevent a fair trial if allowed to continue. (Supplemental, People) The prosecution had failed to disclose some evidence to the defense prior to trial in a legal process called "discovery." The evidence had been gathered through the use of a jailhouse informant. (For more details on the history of the jailhouse informant controversy, see Appendix G.)

The Gathering Storm

This unusual ruling set off a national discussion of the misuse of jailhouse informants in the Orange County criminal justice system:

- *The Orange County Register* ran an extensive series of articles extending from 2014 through 2016 about the controversy. (Humes, Inside)
- *The New York Times* published an editorial in November 2015 calling for a thorough investigation of the OCDA's use of jailhouse informants by the U.S. Department of Justice (DOJ). (Editorial, Dishonest)
- In November 2015, in a sharp critique of the Orange County jailhouse informant controversy, over thirty prominent legal scholars, retired prosecutors, and a retired California Attorney General sent a joint letter to the U.S. Attorney General recommending an investigation of the OCDA and OCSD by the U.S. Department of Justice. (Chemerinsky, Joint)
- Finally, a judge on the United States Court of Appeals for the Ninth Circuit published a law review article in 2015 alleging widespread prosecutorial misconduct in the United States, including the Orange County jailhouse informant controversy. Among other recommendations, the judge proposed placing strict limits on jailhouse informant use, and adopting rigorous standards for government disclosure during discovery. (Kozinski, Criminal)

Amid these calls for independent investigations into the use of jailhouse informants by the OCDA and OCSD, the District Attorney acknowledged errors by his prosecutors and convened a panel of his own to advise him on the use of jailhouse informants by his Office. (Saavedra, Watchdog) The resulting Informant Policies and Practices Evaluation Committee (IPPEC) published a report on December 30, 2015, with a set of ten recommendations to the OCDA. In parallel, the OCDA had set up a Confidential Informant Review Committee (CIRC), and

recommendation #2 in the IPPEC report suggested adding an outside, independent member to the CIRC. (Dixon, Orange)

The IPPEC also recommended that an entity with subpoena power do a full investigation of the controversy. It specifically directed this recommendation to the U.S. Department of Justice, the California Attorney General, and the Orange County Grand Jury as appropriate entities with subpoena power.

After that recommendation, the District Attorney sent a letter to the U.S. Department of Justice (but not to the California Attorney General or the Orange County Grand Jury), inviting them to conduct a review with regard to the OCDA policies and practices on the use of informants, with unfettered access to OCDA documents and staff. (Rackauckas, Request) To date, the U.S. Department of Justice has not committed to such a review or investigation. (For more on the IPPEC, see Appendix B.)

A Wild Ride for the OIR

As the jailhouse informant controversy expanded into a national story, many of the Supervisors felt poorly informed and poorly served by the OIR. Their confidence in the OIR dropped sharply when they first learned about the controversy from the press rather than the OIR. (Saavedra, Department) Despite OIR public reports published in October 2014 and March 2015, with coverage and analysis of the informant controversy, and at least one confidential report to the Board on the same subject, the Board continued to feel they learned too much from the press before hearing from the OIR. (Cuniff, O.C.) (Cuniff, Todd) (Gerda, DA)

The Supervisors were greatly concerned by the growing crisis and the shadow it cast over the County, and concluded that the OIR had let them down. In June 2015, the Board took a straw vote during the budget cycle to determine whether to keep funding the OIR. They voted unanimously to defund the OIR, effective July 1, 2015, and allow the Executive Director's contract to expire August 31, 2015. With only the final budget vote standing in the way, the OIR was one vote away from its demise. The contract of the OIR's Investigations Analyst expired and was not renewed at the end of June 2015, and the OIR Executive Secretary transferred to another position within the County in July 2015, leaving just the Executive Director in the OIR. Some Supervisors voted to defund the OIR to clear the way for establishing a new and better public safety oversight body. Others simply wanted to get rid of the OIR, seeing it as a failed experiment and/or a waste of taxpayer dollars. (Cuniff, O.C.)

It is at this point that the County Counsel informed the Board that the U.S. Department of Justice had expressed a concern about the prospect of having no independent reviewer of the OCSD if the OIR was defunded. This concern was echoed by the OCSD leadership, who welcomed the OIR's continued scrutiny as a much preferred alternative to the possibility of the Justice

Department extending their on-going investigation of the County jails. This investigation dated back to the 2006 in-custody beating death of an inmate, and was about to end.

With input from County Counsel, the Board reversed course and extended the OIR and the Executive Director position until December 31, 2015 (later extended month-to-month). The Board also established an OIR Ad Hoc Committee in July 2015, with two Supervisors as members. This Ad Hoc Committee was charged with exploring public safety oversight models and bringing its recommendations for replacing the current OIR to the full Board.

Even though the OIR was rescued at the last moment, it was barely functional after losing two-thirds of its staff. The OIR Executive Director did continue to provide confidential reports and briefings to the Board, but published no more public reports. The Executive Director resigned effective March 31, 2016, rendering the OIR dormant. The position remains vacant as of this writing, with no one assigned to an acting Executive Director role.

Embarking on a New Public Safety Oversight Model

As the OIR Ad Hoc Committee continued its work, the Board collected input on public safety oversight models from a variety of experts in a special public meeting on July 24, 2015:

- Orange County Sheriff;
- Dean of the University of California, Irvine Law School;
- Executive Director of Police Assessment Resource Center;
- Principal at OIR Group, a private corporation, and former Chief Attorney for the Los Angeles County Office of Independent Review;
- President of the Association of Orange County Deputy Sheriffs (AOCDS); and
- President of the National Association for Civilian Oversight of Law Enforcement (NACOLE).

Next, the Board contracted with a Special Counsel to work with the OIR Ad Hoc Committee to create a new public safety oversight model for the OIR. (The same Special Counsel had designed the original OIR for Orange County in 2008, while leading the Los Angeles County OIR.) Several of the Supervisors were in favor of expanding the OIR review duties from one to five Orange County agencies involved with law enforcement:

- The Sheriff-Coroner's Department (as before),
- The Office of the District Attorney,
- The Office of the Public Defender,
- The Probation Department, and
- The Social Services Agency.

In an unusual Board reversal, the OIR had come from imminent demise to a proposed five-fold expansion. There were three motivating factors prompting this change.

First, the jailhouse informant crisis involved more than just the OCSD; the District Attorney's Office was implicated as well. Hence the Board included the District Attorney's Office. The Board also chose to include other County agencies involved in law enforcement. (Saavedra, Federal)

Second, several Supervisors stated that they wanted to add some of the agencies because of the liability they presented to the County. While the Social Services Agency (SSA) does not sound like it would be involved in law enforcement activities, its Children and Family Services Division works closely with the Juvenile Court to serve children and families endangered by abuse, neglect, or exploitation. Additionally, its Adult Protective Services Program works with law enforcement to serve and protect vulnerable adults. In these roles, SSA is clearly part of the County's law enforcement fabric, and can be the subject of litigation.

The Board is understandably concerned whenever there are costly settlements of litigation against the County. Taxpayers, and thus Supervisors, express concern whenever the actions of County agencies or employees divert taxpayer dollars from other County business. Supervisors are seeking solutions to stop sometimes tragic and usually costly incidents from happening in the future. (Aguilar, OC pursues) (Cuniff, Amid)

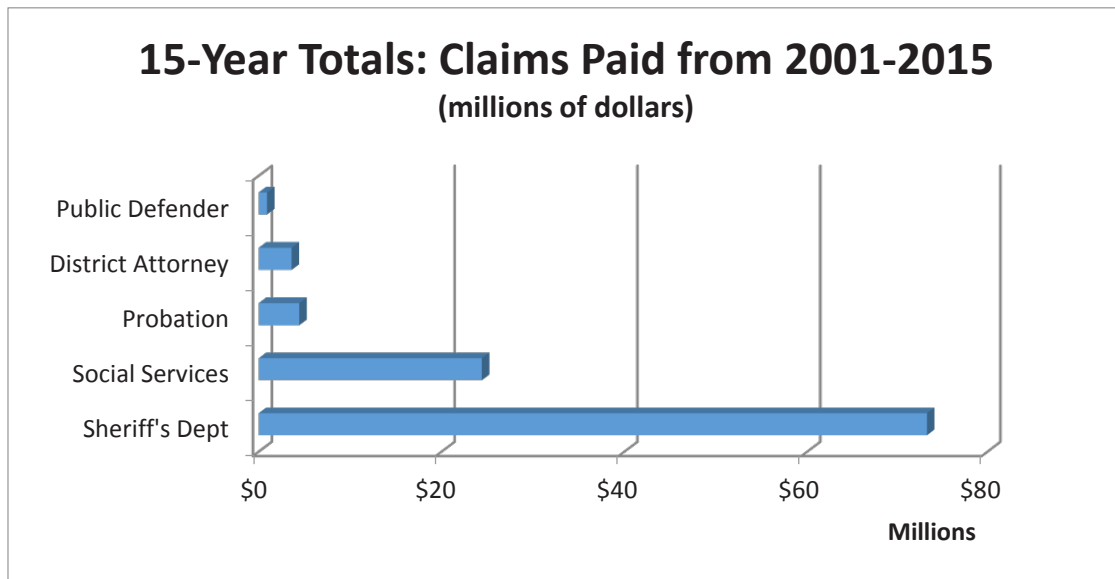


Figure 1. Claims totals for litigation and settlements over fifteen years, by agency

Risk management data provided to the Grand Jury by the County from the fifteen-year period from 2001 through 2015 show that the OCSD has had the largest litigation and settlement costs of the five agencies recommended for the OIR's purview (\$73 million). The SSA was next

highest at \$24 million. The numbers for the other three agencies were much smaller. (See Figure 1 above.) These figures include litigation costs and settlements related to personnel actions as well as outside incidents like the officer-involved shooting death of the Marine Sergeant mentioned earlier.

Third, the Board may have realized that its current expectations did not always line up with the 2008 ordinance or the original contractual requirements that had been agreed with the Executive Director (Gerda, Supervisors) and moved to change the ordinance to better align the OIR with expectations. Most Supervisors felt that the OIR should act pro-actively, finding and averting emerging crises in all five law-enforcement-related agencies. This was to be in addition to its role as a reactive, independent reviewer of agency practices and procedures during internal investigations. (Cuniff, O.C.) (Cuniff, Todd) To that end, at least some members of the Board wanted to expand the OIR's coverage to all five agencies, and expand its purpose from its narrow focus on internal affairs investigations and in-custody deaths and injuries, to a much broader focus on proactively identifying systemic issues within the five agencies and effectively contributing to corrective actions for those issues before an incident could occur.

Expanding the Discussion

In the course of work for the Board's OIR Ad Hoc Committee, the Special Counsel interviewed a number of potential stakeholders, including the District Attorney, the Public Defender, the Chief Probation Officer, the head of the Social Services Agency, public employee union leaders, and others.

The Offices of the District Attorney and the Public Defender submitted emphatic memos to the Board and to the Special Counsel, in strong opposition to the proposal to add them to the OIR's oversight. Both cited legal concerns and precedent that they argued prevented their inclusion in the OIR's purview. (Santana, Santana: ... Continue) (Cuniff, After) (Gerda, DA)

The District Attorney's memo of November 9, 2015 to the Board argued that case law and the California Government Code prohibit the Board from exerting any supervisory control over the manner in which the Office of the District Attorney (OCDA) carries out its prosecutorial work. The memo also asserted that it would not be legal or prudent for the OCDA to share its work materials with a third party such as the OIR. Hence the OIR would be unable to exercise any oversight over the OCDA. Moreover, the memo noted that the OCDA is already subject to substantial oversight by the California Attorney General, the Grand Jury, state and federal courts, and the California State Bar. (Rackauckas, Untitled)

It is worth noting here that the Sheriff-Coroner's Department (OCSD) could have made almost identical arguments in 2008 against oversight of the OCSD by the OIR, but instead chose to embrace the OIR concept. Like the District Attorney, the Sheriff is an elected official, reporting

to the citizenry, not to the Board of Supervisors (Cuniff, Orange ... vote). The Government Code cited in the District Attorney's memo applies to the Sheriff-Coroner as well. Both agencies have similarly strict confidentiality requirements on their records, and the amount of external oversight of the OCSD was already substantial. Instead, the OCSD chose to cooperate with the OIR, shared its records and internal investigations under confidentiality mandated through an attorney-client relationship that it could have rejected, and agreed to additional oversight despite many other forms of oversight by state and federal authorities.

The Public Defender's memo of September 23, 2015 raised objections similar to the District Attorney's. The Public Defender pointed to provisions in California Government Code prohibiting the County Board of Supervisors from exerting any authority over the Public Defender's work. The memo cited a number of prohibitions against allowing access to information related to the Public Defender's clients, including information subject to attorney-client privilege, court-issued protective orders, and prohibitions by bar associations on revealing confidential records. The memo argued that even if the County could force the Public Defender, as client, to enter into an attorney-client relationship with a third party oversight entity (like the OIR) as attorney, the third party would still be legally barred from access to the Public Defender's case-related information. (Ospino, Untitled)

Similar to the District Attorney's memo, the Public Defender's memo noted that the Public Defender is already subject to oversight by Superior and Appellate courts and the State Bar. Lastly, it pointed out that it is not involved in any controversies such as those embroiling the OCSD and OCDA, which had served as catalysts for the original OIR as well as the current update to the OIR. In fact, the Public Defender's Office was instrumental in uncovering the alleged misconduct in jailhouse informant usage, and its clients were the victims of that alleged misconduct. (Ospino, Untitled)

Grand Jury interviews with County leaders knowledgeable about the Probation Department and the Social Services Agency indicated that both agencies would be cooperative with the new OIR. Both see value in OIR assistance in finding systemic issues and corrective actions for those issues, but anticipate difficulties in making all their confidential documents available to the OIR, especially juvenile records and personnel files that are heavily protected by law. In addition, both agencies are headed by Board appointees, so they do not have the same independence of the Board as the elected heads of the OCDA and OCSD.

Finally, several of the Orange County public employee unions raised concerns about the proposed changes to the OIR affecting their members' working conditions. They point to the OIR's involvement in reviewing punitive actions against employees who work for the agencies now added to OIR review. They regard these changes as mandatory subjects of bargaining between the County and the unions representing the workers in the five agencies. (Gerda, DA) (Cuniff, Amid) (Cuniff, Orange ... advance) Thus they requested a meeting with the County to

discuss the proposed changes. The County added language to the 2015 OIR ordinance stating that the OIR is prohibited from doing anything that would affect wages, hours, or working conditions of County employees represented by a recognized employee organization, including any involvement in punitive actions against such employees. The Grand Jury's investigation found that the unions are not universally satisfied with this language.

Selecting the Oversight Model

The Special Counsel (appointed by the Board to redesign the OIR) reported to the OIR Ad Hoc Committee and the Board in November 2015 concerning several models for public safety oversight, but recommended the same auditor model used in Los Angeles and in the 2008 Orange County OIR. He described the auditor model in this excerpt quoted from his report:

The auditor model generally consists of a body of oversight practitioners that are appointed by leaders of the government entity and are paid to perform law enforcement oversight functions. The County's current OIR most closely aligns as an auditor model. The auditor oversight practitioners usually have significantly more access to agency materials and internal investigations and interact more regularly with law enforcement officials. While many auditor models are limited to systemic reviews of the law enforcement agency, some are authorized to review individual cases. Some of the auditor oversight entities are provided the ability to review internal investigations in real time and to make recommendations on case outcomes and discipline. Proponents of the auditor model note the value provided as a result of the acumen and skill of the oversight practitioner versed in law enforcement practices, the significantly greater access usually given to the auditor practitioner, and the increased ability to influence law enforcement agency decisions at both the individual case and systemic levels. Detractors from the auditor model raise concerns about whether auditors so closely immersed in agency functions and decisions are truly independent. Another potential drawback to the model is that because so much of the critical work is undertaken behind the scenes, is granular and necessarily confidential, and because of the restriction California law places on disclosure of personnel matters, it is more difficult to gauge, assess, or be completely aware of the impact the oversight entity has on accountability and reform. (Gennaco, Re: Report)

The Special Counsel considered and rejected two alternatives to the audit model. The Special Counsel described all three models as civilian law enforcement oversight models. The two rejected were a Citizen's Review Board model, and an Investigative model. (Gennaco, Re: Report)

A Citizen's Review Board consists of a panel of volunteer citizens from the community selected by the local governing body, like the Board of Supervisors. Citizen's Review Boards typically have limitations around access, credibility, and influence. They frequently have only restricted

access to law enforcement records, little expertise in law enforcement, and only part-time duty, all of which limit their ability to make fully informed recommendations. This reduces their credibility and hence their influence with the law enforcement agencies they are asked to review. (Gennaco, Re: Report)

The Investigative model has the problem of the extra cost of an independent investigation team, staffed by professionals, in parallel with the law enforcement agency's own investigation team. It also suffers from a frequent failure to earn the trust of either the agency, because of perceived low quality investigations, or its community, because of perceived pro-law-enforcement bias. (Gennaco, Re: Report)

The Board approved in principle the Special Counsel's audit model proposal in early December 2015, and asked the County Counsel to work with the Special Counsel on a revision to the OIR ordinance. On December 15, 2015, the Board passed revisions to the OIR ordinance on a split vote, 3-2, creating the 2015 amended OIR ordinance. The minority opposition to the OIR ordinance was based on the assertion that the original OIR did not work, so it made no sense to expand it from one county agency to five. Instead, if the OIR was not going to be disbanded, the minority said the model should be examined and fixed first, with its current scope overseeing the OCSD, to prove its value. Only after that should the Board consider expanding the scope of the OIR, they asserted. (Item #61, Clerk)

During its interviews, the Grand Jury heard additional suggestions for operating an independent review function. One such interesting suggestion was to avoid hiring a number of permanent employees to run OIR reviews and audits. Instead, the interviewee suggested hiring highly-skilled consultants for limited-time review and audit engagements with clear objectives. The consultant would come in, plan a review or audit process, execute it, provide a report with facts, findings, and recommendations, and then end the consultancy. The County would pay for OIR services only when they were required, avoiding the cost of carrying permanent employees who would likely be generalists rather than specialists and wouldn't necessarily be needed all the time. The interviewee suggested that this approach could enable greater independence, greater expertise, and possibly lower total costs, when compared with a permanent staff approach.

Amending the OIR Ordinance

The biggest changes in the 2015 ordinance, compared to the 2008 ordinance, come down to three things.

1. The Board expanded the OIR scope five-fold, adding the Office of the District Attorney, Office of the Public Defender, the Probation Department, and the Social Services Agency to the Sheriff-Coroner's Department as agencies under the purview of the OIR.

2. The Board gave the OIR a much broader purpose and intent, retaining specific incident review, but also adding systemic issue review involving the performance and operations of the five agencies. It also added the task of identification and resolution of high risk liability issues.
3. The Board changed the focus from assisting and advising the agency under review, to acting as independent resource and counsel to the Board. This effectively shifted the OIR focus from assisting the agencies under review to assisting the Board in its supervision of the five agencies.

The 2015 OIR ordinance expansion adds several key requirements:

1. To review existing systemic issues (and specific incidents which may identify systemic issues) involving the five agencies, and be the Board's independent resource and counsel to ensure accountability with respect to the performance and operations of the five agencies.
2. To conduct substantive systemic audits and reviews of the five agencies' functions impacting departmental or employee accountability and performance.
3. To work with County Counsel, County Risk Management, and department heads to ensure that critical incidents involving significant risk and/or liability to the County are identified, and then addressed with corrective actions to prevent future occurrences.
4. To review department practices in the five agencies and recommend changes based on evolving best practices.

(See Appendices C and D for the 2008 and 2015 OIR ordinances. See Appendix E for Table 6, which compares the key aspects of the two ordinances.)

2016: Concerns Arise about the Newly Expanded OIR

The ink was hardly dry on the 2015 ordinance in December 2015 before observers began to raise concerns about its cost, value, workability, and practicality. The following are questions the Grand Jury looked at, but for which it could only find incomplete answers. This is largely due to the current transitional status of the OIR. Some of these questions were raised by the County officials we interviewed. Most were questions we asked in the interviews, which turned out to be unanswerable with the transition to the new ordinance not yet in motion at that point. As the transition unfolds, answers to these questions will likely come out of operational decisions by the Board and the OIR itself.

- What will the fully operational OIR cost? Are the higher costs justified by the expected results?
- Is the OIR redundant? Are the relevant County agencies already being sufficiently inspected and audited by outside entities?

- Can the OIR achieve its objectives without the full cooperation of the five County agencies?
- What, if any recourse, do the Board and/or OIR have if the Office of the District Attorney were to offer the OIR less access to its confidential information than it gave to the IPPEC and offered to the U.S. DOJ?
- What specialized expertise will the broadened range and scope of the OIR require?
- Who will determine the details of the new OIR's responsibilities and focus?
- How will OIR performance be objectively evaluated?
- Is it realistic to expect the OIR to find all the problems of these five agencies and figure out which could result in high profile media events, like jail escapes?
- Is it practical and realistic to implement OIR activities in all agencies concurrently?
- Does the employer-employee relationship hinder or help the independence of the OIR? Would making the OIR attorneys and analysts independent contractors increase or decrease their independence from the Board of Supervisors (Board)?
- Would the employer-employee relationship, rather than an independent contractor relationship, make it easier for the Board to influence the OIR for politically-motivated purposes, such as directing the OIR to target an agency to discredit an agency head?
- Can the OIR be effective if the Offices of the Public Defender, and the District Attorney, the Probation Department, and the Social Services Agency agreed to oversight in only a narrowly defined part of the agencies' functions, and for limited time periods?

Projected Cost

At first glance, the cost of the Office of Independent Review could be a significant consideration. The annual budget for the original OIR, fulfilling the 2008 ordinance and overseeing only the OCSD, was \$750,000 for six positions, but was never fully funded or staffed. (Connolly, OIR Operations, p 1)

The current planned 2016-2017 budget for the new 2015 OIR is \$454,949, which is 1% above the 2015-2016 OIR budget of \$450,445. (Orange County CEO, Finance & Budget) Given the five-fold expansion embodied in the 2015 ordinance, the 2016-2017 OIR budget is only a placeholder at this point, and unrealistically low. It will have to change once the new OIR is staffed and launched.

The Grand Jury has conservatively estimated that the salaries and benefits of the new OIR could be approximately \$3 million per year, based on the County's 2015 Human Resources salary listing. This is only a rough estimate. The Grand Jury assumed three-member teams assigned to oversee each agency – attorney, subject matter expert, and one clerical, managed by the Executive Director. In addition, the budget does not include office space, office expenses, or training, which will have to be accounted for. (See Table 2 below.)

# of positions	Position Title	Duties	Job Class or Equivalent	Annual Salary & Benefits	Total
1 FTE	Executive Director	Manage staff, set policy and procedure, BOS liaison	Administrative Manager III SPL	\$210,000 + 63,000 <u>+ 9,180</u> \$282,180	\$282,180
5 FTE	Staff Attorneys	Legal Counsel, monitor critical incident investigations	Attorney III	\$130,488 <u>+ 39,146</u> \$169,634	\$848,170
5 FTE	Subject Experts-investigators	Audit of performance, compliance, policy, and procedure	DA Investigator	\$117,324 <u>+ 35,197</u> \$152,521	\$762,605
1	Lead Jail Monitor	Manage Jail & Juvenile Hall monitoring	Lieutenant or Juvenile Hall Assistant Director	\$148,944 <u>+ 44,683</u> 193,627	\$193,627
4	Jail/Juvenile Hall Monitor	Monitor jail operations, incidents, and complaints	Sergeant or Sup. Detention Control Officer	\$123,000 <u>+ 36,900</u> 159,900	\$639,600
5 FTE	Clerical (confidential)		Office Manager (1) Legal Secretary (1) Office Assts (3)		\$304,559
					\$3,030,741

Notes: Other position possibilities for the Executive Director with annual salary and benefits are Asst. District Attorney equivalent at \$223,101 + \$66,930 = \$290,031, or Senior Deputy District Attorney at \$167,880 + \$50,364 = \$218,224. The Executive Director benefits include a car allowance of \$765/month or \$9,180/year. The ordinance requires the Executive Director to have three years' experience in law enforcement oversight. Top salary and estimated benefits @ 30%.

Table 2. Estimated Annual Budget for Implementing 2015 OIR Ordinance

The Grand Jury discussed this rough estimate with some of the County leaders interviewed, and they appeared unconcerned at an estimated \$3 million a year. Three million dollars out of a total annual budget of over \$6 billion (FY 2016-17) is 0.05% of the budget. If the OIR's influence on policies, practices, procedures, and protocols prevents even one major claim a year, the OIR could potentially pay for itself.

The cost also appears minimal if it can prevent just one in-custody death, or events that can lead to U.S. Department of Justice (DOJ) involvement and the possibility of a consent decree. The cost of complying with a DOJ consent decree is high, because the DOJ watches very carefully

and demands a lot of information. (Cuniff, Divided) Note that the Board chose to continue funding the original OIR and extended the contract of the Executive Director in the summer of 2015, at least in part because the DOJ voiced concern about defunding it. Some high-level County officials voiced concerns that the DOJ might choose to extend their investigation of the County jails if the oversight provided by the OIR were allowed to lapse.

The cost would be harder to justify if the OIR failed to achieve any systemic changes, or if employee misconduct and critical incidents increased or remained at current levels.

Experience and Expertise Requirements

The ordinance requires the Executive Director to have at least three years' experience in law enforcement oversight, but is silent on requirements for staff attorneys. With the expansion of its oversight role from one agency to five, it is likely that the OIR will need to have more highly specialized competencies available among its staff. None of the County officials with whom the Grand Jury raised this issue were ready to discuss needs for specialized expertise in the OIR, as the implementation plans for the new OIR were not yet in place.

Four of the five agencies covered by the 2015 ordinance provide criminal law services and related enforcement services: the Office of the District Attorney, the Office of the Public Defender, the Probation Department, and the Sheriff-Coroner's Department. The fifth agency, the Social Services Agency (SSA), is one of the largest in the County, with over 4,000 employees covering a broad range of specialized skills and expertise, only some of which are law-enforcement related, as discussed earlier. Based on this, the Grand Jury believes that specialized expertise could be very useful, for instance for the staff attorney and subject experts assigned to review the Children and Family Services Division of the SSA. Experience with law enforcement oversight in the areas of child abuse, neglect, and exploitation could be important in this role. The OIR staff attorneys reviewing the other agencies could also benefit from subject matter experts in their respective fields. This all remains to be defined by the County.

Table 3 below is a high level summary of the services provided by the five agencies (At Your Service), and the current number of employees of each of the five agencies. The total of 11,627 employees across the five affected agencies represents 64% of the total 18,118 employees in the County. The OCSD's 4,640 employees represent 24% of all the County's employees. So the increase in the OIR's reach from 2008 to 2015 is substantial, from 24% to 64% of all County employees.

Agency	Services	Employees
Office of the District Attorney / Public Administrator	<ul style="list-style-type: none"> • Law enforcement, criminal and civil prosecutions • Public administration of estates 	794
Probation Department	<ul style="list-style-type: none"> • Supervision of adult and juvenile offenders on probation or in diversion programs • Operation of Juvenile Hall and juvenile offender camps • Investigations for the court • Sentencing reports and recommendations • Crime victim restitution assistance 	1,446
Public Defender	<ul style="list-style-type: none"> • Legal representation for individuals unable to afford a lawyer in criminal, juvenile, mental health, and dependency cases 	397
Sheriff-Coroner's Department	<ul style="list-style-type: none"> • Public safety and law enforcement <ul style="list-style-type: none"> ○ Patrol and investigation ○ Court security ○ Jail operation and management ○ Emergency management and homeland security • Forensic and coroner services 	4,640
Social Services Agency	<ul style="list-style-type: none"> • Children and family services • Elder and child abuse reporting and response services • Adoption and foster care programs and services • In-home services • Delivery of public assistance programs and health insurance 	4,350
		11,627

Table 3. Summary of Services Provided by the Five Agencies & Employee Counts

Cooperation or Lack Thereof

Despite some dissatisfaction with its performance, the OIR was largely successful in carrying out its original mandate under the 2008 ordinance, in the view of the Grand Jury. The successes can be attributed to the cooperative nature of the relationship between the OIR and the management of OCSD.

Absent a willingness to work cooperatively, the likelihood for a successful outcome is more tenuous. The OCDA seems disinclined to offer such cooperation. With the case law and Government Code seemingly on the side of the OCDA, its voluntary agreement to, and

cooperation with, oversight by the OIR appear to be essential to an in-depth OIR engagement with the OCDA, just as was the case with the OCSD in 2008.

The previous Public Defender was also disinclined to cooperate, as described earlier, but has left the Public Defender's office in 2016 to accept a judicial appointment. The new Public Defender may take a different position on cooperation with the OIR, especially if terms of employment require cooperation at some level. The Board will select the new Public Defender and is expected to set terms of employment along these lines, based on interviews done by the Grand Jury.

In any case, the Special Counsel, who developed the 2015 OIR model for the Board, has asserted that the OIR could study systemic issues within the Office of Public Defender without access to documents protected by the Public Defender's attorney-client relationship with its clients. (Gerda, Amid) Also, one County leader has similarly contended that the 2015 OIR could examine important issues of public policy within the OCDA even if the OCDA refuses to enter into an attorney-client relationship with the OIR. (Cuniff, After) In both cases, however, it's clear that the OIR's visibility into the inner workings of the two agencies could be limited in the absence of cooperation from the agencies.

It is important to note that there is some precedent for the OCDA to cooperate fully with an outside, independent entity, for the purposes of an unbiased evaluation or investigation of OCDA policies and practices. The OCDA provided unrestricted access to OCDA files and staff to the IPPEC for their evaluation report in the second half of 2015 on OCDA informant policies and practices. (Dixon, Orange) The OCDA has also offered the same unrestricted access to the U.S. Department of Justice in the OCDA's January 2016 request that the DOJ perform an independent investigation of the OCDA's informant policies and practices. (Rackauckas, Untitled)

The Probation Department and the Social Services Agency report to the County Executive Office and through it to the Board, so they have less opportunity to resist the oversight of the OIR. Both agencies, in fact, appear likely to start from a position of cooperation with the OIR, as noted earlier, much as the OCSD did in 2008.

However, research by the Grand Jury has led it to question the feasibility of accessing confidential documents within these two agencies via attorney-client privilege. In fact, the original OIR's two review assignments with the Probation Department required the OIR to get Juvenile Court approval for access to any juvenile files held by the County or courts. Court approval could prove to be a more reliable way, albeit more difficult and time-consuming, to get the access the OIR needs to be fully effective in its reviews, but only if the Juvenile Court is willing.

In general, the Grand Jury found that some County leaders doubted the feasibility of getting access to confidential documents by establishing an attorney-client relationship between an OIR

attorney and an agency. Not just juvenile records have this problem. The Public Defender and District Attorney both argued the same for documents and materials they control.

All five agencies could argue that they are already inspected, audited, and reviewed by enough outside entities to make OIR oversight redundant and unnecessary. However, the OIR is, primarily, a way for the County to take ownership and ensure that, through its own initiative, there is sufficient review of these agencies, irrespective of what other organizations, outside of its control, are doing.

Planning

Some of the County leaders interviewed by the Grand Jury felt that the next step for developing the OIR should be to define the details of the structure, scope, and operations, before hiring an Executive Director. This could involve the services of the Special Counsel who designed the 2015 OIR model for the OIR Ad Hoc Committee. The thinking is that these details can affect who would be best suited to be the Executive Director, so these parameters should be worked out beforehand to guide the hiring process. Others see the hiring as the first step, so the Executive Director can play the central role in determining and elaborating the operational details.

Still an Expectation Mismatch?

Though not specified in the 2015 ordinance, the Grand Jury has learned from interviews with County leaders that some, like their predecessors, are expecting the new OIR to be a pro-active, hard-hitting investigative team that will find and head off most, if not all, emerging crises in the five agencies specified. Certainly, searching out best practices and working with the five agencies to apply them to their policies and procedures would allow the OIR to help avert some future problems, crises, litigation, and large settlements.

The 2015 OIR ordinance calls for the OIR to “conduct substantive systemic audits and reviews” of functions in the five agencies that impact accountability and performance. These systemic audits, if allowed, have the potential to uncover developing problems and take corrective action before they reach a critical stage.

However, there appears to the Grand Jury to be no clear or definite language in the 2015 OIR ordinance giving the OIR the authority and funding to conduct its own *independent* systemic audit investigations. Recall that the 2008 ordinance only allowed for *reviewing* the OCSD’s internal investigations, not for the OIR to conduct its own independent investigations. It’s unclear to the Grand Jury whether the substantive systemic audits and reviews authorized in the 2015 ordinance would follow the 2008 model or not.

As already noted, the expectations of many Supervisors over the years were that the OIR could and would, in fact, conduct its own independent investigations, even though such investigations were neither authorized nor funded by the 2008 ordinance. It's possible that the 2015 ordinance could be interpreted as calling for the OIR to review the audits and reviews done by Performance Audit and/or Internal Audit, rather than being a third entity performing its own independent audit investigations. It's also possible the Board intended to authorize independent audit investigations by the OIR, in an effort to align the recurring expectations of some Supervisors over the years with the new OIR mandate in the 2015 ordinance.

By adding the focus on best practices and audits to the 2015 ordinance, the Board has added measures that could improve the chances of preventive successes. Still, the expectation that the OIR could ensure that even a minority of high risk and potential liability issues are identified and addressed through corrective actions seems ambitious to the Grand Jury, and perhaps even unrealistic, particularly when one considers the size and reach of the five agencies. The OIR can certainly assist here, and every large settlement averted benefits all involved. The OIR, through data analysis, could learn over time where the most likely sources of lawsuits are concentrated in the five agencies, and then spend proportionately more time focusing on those areas. But the issue of which entity would actually perform the audit investigations is still an open question, in the view of the Grand Jury.

Independence of the OIR

The 2015 OIR ordinance calls for the OIR Executive Director and professional staff to be County employees rather than independent contractors. Under the 2008 OIR ordinance, these positions were independent contractors.

The Board determined the high-level purpose and responsibilities of the OIR in 2008 through the 2008 ordinance and the OIR Executive Director's contract. However, that contract specified in section 7, "Independent Contractor Status," that the Executive Director himself is "wholly responsible for the means and methods of performing these specialized legal services and accomplishing the results, deliverables, objectives and/or purposes as specified and/or requested by County." (Item #21, Clerk) That is, under the 2008 ordinance and the Executive Director's contract, he could independently decide how to implement the general goals and responsibilities laid out in the ordinance and his contract, thereby gaining a measure of independence from the Board. At the same time, he was also independent from the chain of command and management of the agency he was independently reviewing, namely the OCSD.

The Executive Director's contract allowed for either party to terminate the contract in thirty days with written notice, so he was never completely independent of the Board. Under the 2015 ordinance, as a County employee, the new Executive Director will similarly be subject to termination by the Board, especially if he is required to sign an at-will condition of hiring, like

many in upper management. Even without that condition, an employee can be terminated by eliminating his position. So neither independent contractors nor employees can avoid the ultimate control of the Board, namely termination. Short of termination, an independent contractor appears to have more leeway than an employee in performing his duties, under the County's terms for independent contractor status.

The change from contractor to employee in the 2015 ordinance gives the Board substantially more direct control of the OIR's work. Unlike an independent contractor, an employee is not wholly responsible for the means and methods of performing his work, but rather is subject to the direction and control of his employer on how to do any part of his work, or all of it. This change reduces the OIR's independence of the Board, in the view of the Grand Jury. As a result, the OIR, under the terms of the 2015 ordinance, may end up being perceived by the subject agencies simply as an extension of the Board. A number of people interviewed by the Grand Jury raised this new level of Board control over the OIR as a significant concern, because it introduces an OIR vulnerability which could be used for launching politically-motivated attacks on any of the five agencies and/or their executive management.

Current Status, Mid 2016

The OIR is currently in transition. The 2015 OIR exists only on paper. The 2008 OIR no longer exists following the departures of its entire staff. A detailed definition of the 2015 OIR is yet to be completed apart from the limited description in the ordinance, and an Executive Director has yet to be hired.

In response to the lack of an active OIR, the OCSD has requested and received approval for a Constitutional Policing Advisor, similar to an OIR, but reporting to the Sheriff instead of the Board. This ensures that the OCSD will continue to receive good advice on honoring and protecting the public's constitutional rights, in the absence of an OIR. Unlike the OIR models, past and present, which are largely reactive, the Constitutional Policing Advisor model is to be strictly pro-active in examining all policies and procedures and proposing changes to preempt high-risk, high-cost constitutional rights violations that cause litigation. (Graham, O.C.)

Conclusions

The Grand Jury is cautiously optimistic that the OIR will return in fiscal year 2016-2017, but it remains to be seen whether the new OIR will get the cooperation it needs from the OCDA. Moreover, the revised 2015 OIR ordinance lacks details on program design, duties, key performance indicators (KPIs), and outcome measures. The County has yet to develop a detailed vision of exactly what this iteration of the OIR will look like or achieve. Much work remains to fill out the details and reestablish the OIR.

On balance, the Grand Jury believes the original OIR was a worthwhile addition to County government to ensure that the Sheriff's Department's internal investigations and responses to in-custody deaths or serious injuries were thorough, fair, and effective. It suffered, however, from expectations by the Board that were not supported by the founding ordinance. This created tension between the Board and the OIR throughout the past eight years. Now the Board has put the original OIR to rest and started building its replacement with new provisions more closely, but still not perfectly, matched to the Board's expectations of independent and pro-active investigation as well as review. Obviously, it is too early to judge how effective the new OIR may be.

Based on its investigation, the Grand Jury is providing a number of findings and recommendations in this report. They are directed to the Board for its consideration as it fills in the details of the new OIR, and to the five agencies called out in the 2015 ordinance. The hope of the Grand Jury is that the new OIR will apply the lessons learned from the successes and struggles of the original OIR, and fulfill its mandate as an independent watchful eye ensuring thorough, fair, and effective law enforcement for the citizens of Orange County.

FINDINGS

In accordance with *California Penal Code* Sections 933 and 933.05, the 2015-2016 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 "Office of Independent Review: What's Next?" the 2015-2016 Orange County Grand Jury has arrived at eleven principal findings, as follows:

- F1.** By changing the employment relationship for the revised OIR's Executive Director and professional staff from independent contractor to County employee, the Board of Supervisors appears to have made the 2015 version of the Office of Independent Review less independent of the Board and more vulnerable to the Board exerting politically-motivated influence on the five covered agencies and/or their leadership through the OIR.
- F2.** Some members of the Board of Supervisors were dissatisfied with the OIR's performance from 2008-2015. Some of the dissatisfaction appeared to be the result of a mismatch between Supervisors' expectations and the OIR mandate as described in the 2008 OIR ordinance and the OIR Executive Director's contract.
- F3.** Although the 2015 OIR ordinance calls for the OIR to "conduct substantive systemic audits and reviews," there is no explicit provision of authority or resources for the OIR to conduct them independently, a recurring supervisory expectation. Without the authority or resources to conduct its own independent audit investigations, the 2015 version of the OIR

would have to act only as reviewer of audits and reviews performed by Performance Audit, and/or Internal Audit, and/or the agencies themselves.

- F4.** The OIR could easily cost upwards of \$3 million/year due to expansion to five agencies plus jail monitors.
- F5.** It will be a challenge to find and retain a permanent staff with the qualifications and sufficient subject matter expertise to identify best practices and to review the broad range of services provided by the five agencies identified in the 2015 ordinance.
- F6.** The increase in OIR purview from the 2008 ordinance to the 2015 amended ordinance, from just the OCSO to the OCSO plus four other agencies, is so large in the breadth of services offered by the five agencies, the number of County employees covered, and the number of OIR staff to be hired, that a phased implementation will be required.
- F7.** The strenuous opposition of the OCDA to its inclusion in the OIR's purview could pose a serious threat to the ability of the OIR to provide an effective review of the OCDA as required by the 2015 ordinance.
- F8.** The willingness of the OCSO to work cooperatively with the OIR was crucial to allowing the original 2008 OIR to be effective as an independent reviewer of OCSO's internal investigations.
- F9.** With the OIR's newly-expanded role to review the policies and practices of the OCSO and recommend reforms consistent with evolving best practices, the OCSO has an opportunity to take advantage of the new OIR to assist the OCSO in recovering from the current jailhouse informant controversy. This would require the continued voluntary cooperation of the OCSO with the new OIR.
- F10.** With the OIR's newly-expanded role to review the policies and practices of the OCDA and recommend reforms consistent with evolving best practices, the OCDA has an opportunity to take advantage of the new OIR to assist the OCDA in recovering from the current jailhouse informant controversy, and in particular, implementing IPPEC recommendation #2. This would require the voluntary cooperation of the OCDA with the new OIR.
- F11.** The assurance of confidentiality, through attorney-client privilege between the five relevant County agencies and the OIR, is essential to the effective implementation of the 2015 OIR ordinance. Still, even attorney-client privilege may be insufficient for allowing access to some confidential documents, like juvenile records and personnel files that are very tightly controlled by the courts.

RECOMMENDATIONS

In accordance with *California Penal Code* Sections 933 and 933.05, the 2015-2016 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 "Office of Independent Review: What's Next?" the 2015-2016 Orange County Grand Jury makes the following eight recommendations:

- R1.** The Board of Supervisors should: (1) request the Special Counsel to provide a comparative analysis between using employees or independent contractors to staff the OIR, with particular emphasis on the potential vulnerability of the OIR to politically-motivated influence, and to provide recommendations, should the County use employed staff, for limiting the vulnerability of the OIR to such influence and (2) based on such analysis, consider either amending the 2015 OIR ordinance to ensure the Executive Director and all professional staff are independent contractors or, implement recommendations of the Special Counsel with respect to limiting the vulnerability of the OIR to political influence, all to be completed by December 31, 2016. (F1)
- R2.** The Board of Supervisors should direct the new OIR Executive Director to provide the Board, within three months of the Executive Director being hired, with a plan, budget, and measureable performance outcomes for launching and operating the new OIR. The measurable performance outcomes should be traceable to the responsibilities defined in the 2015 OIR ordinance. (F4, F5, F6, F7, F9, F10, F11)
- R3.** The Board of Supervisors should direct the new OIR Executive Director to consider other models for independent oversight of law enforcement, in addition to the three presented to them by Special Counsel, and make recommendations to the Board as to any elements from such models that could augment the model chosen by the Board and that would be useful and necessary to implement an efficient and effective OIR, all to be completed within six months of the Executive Director being hired. Among other concerns, the OIR Executive Director should consider whether and how the OIR, as currently designed, can meet the Board's desire for the OIR to engage in independent investigations and recommend specific elements that could be integrated into the model chosen by the Board, including explicit authority, budget, and staffing provisions, to support the Board's desire for independent OIR investigations. (F1, F2, F3, F4, F5, F6, F7)
- R4.** The Board of Supervisors should implement the 2015 ordinance in phases, one agency at a time, with incremental process improvements after each phase. (F4, F5, F6)

- R5.** As a pilot project, the Board of Supervisors should direct the new OIR Executive Director to staff, within one year of the hiring of the Executive Director, at least one well-defined, short-term, closed-end review or audit with a skilled independent contractor acting as a short-term consultant or “special counsel.” The Board should direct the OIR Executive Director to provide a written report to the Board, three months after the review or audit is completed, comparing the cost and effectiveness of using a short-term special counsel with deep subject matter expertise, versus the cost and effectiveness of using and maintaining permanent staff. (F4, F5, F6)
- R6.** The Board of Supervisors should direct the OIR Executive Director to work with each of the five agencies to negotiate specific, and possibly narrow, initial scopes for OIR involvement with each agency, all to be completed within three months of the Executive Director being hired. (F4, F5, F6, F7, F8, F9, F10, F11)
- R7.** For three years starting with the hiring of the new OIR Executive Director, the OCSD should provide the revised OIR with open access to the Sheriff’s internal processes for defining, and insuring adherence to, its policies and procedures on the legal use of jailhouse informants, so that the OIR could help recommend reforms consistent with evolving best practices. This requires a continuation of the existing attorney-client relationship between the OIR and the OCSD. (F8, F9, F11)
- R8.** The OCDA should add an OIR staff attorney as an “outside” or independent member of the OCDA’s Confidential Informant Review Committee, in keeping with IPPEC Recommendation 2, given the following prerequisites: The Board of Supervisors should direct the OIR Executive Director to hire, with OCDA approval, and within six months of the hiring of the Executive Director, an OIR staff attorney with legal expertise in the use of informants in trials. Within one month after hiring the OIR staff attorney, the OCDA should enter into an attorney-client relationship, with OCDA as client and the OIR staff attorney as attorney, and add the OIR staff attorney to the CIRC. With confidentiality protected by attorney-client privilege, the OCDA should provide the OIR staff attorney with confidential access to all of OCDA’s processes, policies, procedures, practices, protocols, records, documents, and staff related to OCDA’s use of jailhouse informants. (F7, F8, F10, F11)

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 County 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) detail, as follows, the manner in which such comment(s) is 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 therefor.

(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 therefor.

(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 and/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 or requested.

Responses are required from the following governing bodies within 90 days of the date of the publication of this report:

Orange County Board of Supervisors – Findings F1 – F11; Recommendations R1 – R8

Responses are required from the following elected agency or department heads within 60 days of the date of the publication of this report:

Orange County District Attorney –
Findings F1, F4, F5, F7, F10, F11; Recommendations R6, R8

Orange County Sheriff-Coroner–
Findings F1, F4, F5, F8, F9, F11; Recommendations R6, R7

Responses are requested from the following non-elected agency or department heads:

Orange County Office of the Public Defender –
Findings F1, F4, F5, F11; Recommendation R6

Orange County Probation Department –
Findings F1, F4, F5, F11; Recommendation R6

Orange County Social Services Agency –
Findings F1, F4, F5, F11; Recommendation R6

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APPENDICES

Appendix A: Acronyms

AOCDS	Association of Orange County Deputy Sheriffs
BOS	Board of Supervisors
CIRC	Confidential Informant Review Committee
DA	District Attorney
DOJ	Department of Justice
FTE	Full Time Equivalent
IAU	Internal Affairs Unit
IPPEC	Informant Policies and Practices Evaluation Committee
KPIs	Key Performance Indicators
LAC	Los Angeles County
NACOLE	National Association for Civilian Oversight of Law Enforcement
OCDA	Orange County District Attorney
OCSD	Orange County Sheriff-Coroner's Department
OIG	Office of Inspector General
OIR	Office of Independent Review
S.A.F.E.	Strategy, Accountability, Focus, Evaluation
SSA	Social Services Agency

Appendix B: Informant Policies and Practices Evaluation Committee

The District Attorney announced the Informant Policies and Practices Evaluation Committee (IPPEC) on July 6, 2015. The committee published a report on December 30, 2015, with a set of ten recommendations to the OCDA, as well as a separate recommendation that an entity with subpoena power do a full investigation of the controversy. It specifically directed the latter recommendation to the U.S. Department of Justice, the California Attorney General, and the Orange County Grand Jury as appropriate entities with subpoena power. (Dixon, Orange) (See Tables 4 and 5 below for the full set of recommendations.)

The IPPEC report found that a lack of leadership and a culture of winning at all costs in the District Attorney's office allowed repeated legal errors to be made related to the use of jailhouse informants in the DA's prosecution of serious cases in the Target, Gang, and Homicides Units of the DA. This was the basis for the IPPEC's recommendations. It is the opinion of the Grand Jury that the first, second, and tenth recommendations have the most relevance to this Grand Jury report.

The first recommendation was to tighten the OCDA policies and procedures on the use of jailhouse informants, making them clear and consistent, and allowing for the careful evaluation and strict control of the use of such informants.

The second recommendation called for the Office of the District Attorney to continue the use of its recently-established Confidential Informant Review Committee (CIRC), and add an outside or independent member to the CIRC, preferably a retired attorney or judge who had worked as a criminal defense attorney. The CIRC is charged with reviewing any proposed use of jailhouse informants by the OCDA, and deciding whether to approve that use within well-defined policies and protocols.

The tenth recommendation was to appoint an independent monitor for a three-year period to oversee OCDA compliance with the IPPEC's recommendations. The IPPEC suggested that the monitor be a retired judge.

Table 4 below contains the ten IPPEC recommendations to the OCDA.

Number	Recommendations to the Office of the District Attorney
1	Revise OCDA policies and procedures regarding the use of jailhouse informants.
2	Establish a Confidential Informant Review Committee (CIRC) with defined protocols and include an "outside" or independent member on the CIRC.
3	Overhaul the OCDA training program, with extensive additional training regarding discovery obligations and the use of jailhouse informants.

4	Coordinate with the OCSD and all law enforcement agencies in Orange County regarding jailhouse informant protocols and procedures, including OCDA's Jailhouse Informant Policy, and engage in detailed training on the Orange County Informant Index (OCII).
5	Restructure and combine into one unit the OCDA Gang Unit and Target Unit.
6	Establish an OCDA Conviction Integrity Unit.
7	Establish an OCDA Chief Ethics Officer position.
8	Reinstate the Chief Assistant District Attorney position.
9	Eliminate "Chief of Staff" position and create a position of "Assistant District Attorney for Media Relations."
10	Appoint an independent "monitor" for a three-year period to oversee OCDA compliance with the IPPEC's recommendation.

Table 4. IPPEC recommendations to the Office of the District Attorney

The IPPEC directed the additional recommendation in Table 5 below to the U.S. Department of Justice, California Attorney General, and the Orange County Grand Jury.

Recommendation to US DOJ, CA Attorney General, & Orange County Grand Jury

To demonstrate transparency and foster confidence in the Orange County criminal justice system, investigate the jailhouse informant controversy in Orange County using document subpoena power and the ability to compel witnesses to be questioned under oath. At a minimum, an Investigative Grand Jury should conduct such an inquiry, if not the U.S. Department of Justice or the California Attorney General.

Table 5. IPPEC recommendation to the U.S. DOJ, California AG, and OC Grand Jury

Appendix C: 2008 Ordinance Establishing the Original OIR

ARTICLE 18. - OFFICE OF INDEPENDENT REVIEW

Sec. 1-2-225. - Purpose and intent.

It is the purpose and intent of the Board of Supervisors to establish an Office of Independent Review to monitor, assist, oversee and advise the Orange County Sheriff-Coroner in the investigation of the following:

- (a) Selected internal and citizen complaints in which it is alleged that peace officers and custodial officers employed by the County in the Sheriff-Coroner Department committed certain actions or inactions in the performance of their duties; and
- (b) Selected incidents of death or serious injury occurring to persons while in the custody of employees of the Sheriff-Coroner Department.

(Ord. No. 08-004, § 1, 2-26-08)

Sec. 1-2-226. - Establishment of Office of Independent Review; Qualifications, Selection and Authority of Executive Director and Staff.

- (a) The Board of Supervisors hereby establishes the Office of Independent Review (hereinafter "OIR"), which shall initially be comprised of an Executive Director, staff attorneys and administrative support staff as the Executive Director shall determine are necessary.
- (b) The Executive Director shall be an attorney licensed to practice law in the State of California, shall have had no imposition of discipline by any State or Federal Bar, and shall have had at least three (3) years' experience in conducting oversight of law enforcement personnel and departments. The Executive Director and staff attorneys shall be employed pursuant to independent contract with the County of Orange, and shall hold an attorney-client relationship with the County of Orange and the Orange County Sheriff-Coroner. The terms and conditions of the contract of the Executive Director and of all staff of the OIR shall be set by the Board of Supervisors.
- (c) The Executive Director shall be selected by the Board of Supervisors, upon the advice and counsel of an ad hoc selection committee comprised of the following persons:
 - (1) Two (2) members of the Board of Supervisors;
 - (2) The County Executive Officer or his or her designee;
 - (3) The District Attorney or his or her designee;
 - (4) The Sheriff-Coroner or his or her designee;
 - (5) The County Counsel or his or her designee;

- (6) The Executive Director of the Orange County Human Relations Commission; and
 - (7) One (1) designee each of the Orange County Employees Association and the Association of Orange County Deputy Sheriffs.
- (d) The OIR shall, consistent with existing state law:
- (1) Provide periodic status reports on all investigations and significant matters within the purview of the OIR to the Board of Supervisors and the Sheriff-Coroner.
 - (2) Be authorized to provide such periodic reports to the public concerning its activities and findings as it deems proper and appropriate.
 - (3) In coordination and cooperation with the Sheriff-Coroner, provide ongoing counsel for the initiation, structuring and development of investigations conducted by the Internal Affairs unit of the Sheriff-Coroner (hereinafter "the I.A. Unit").
 - (4) In coordination and cooperation with the Sheriff-Coroner:
 - (i) Monitor, as necessary and appropriate, investigations arising from complaints or custodial deaths or injuries;
 - (ii) Respond, as necessary and appropriate, to scenes of investigations;
 - (iii) Have access to, and participate in, confidential meetings and proceedings in order to monitor cases in real time;
 - (iv) Provide advice and counsel to the I.A. Unit so as to ensure a thorough, unbiased, and impartial fact-finding process and consistent and appropriate conclusions; and
 - (v) Review and critique completed investigations and conclusions of the I.A. Unit.
 - (5) Establish and maintain liaison with the District Attorney, Sheriff-Coroner Department Executives, the Probation Department, the County Counsel, the County Executive Office, the County Human Resources Department, employee unions, the United States Attorney, the Federal Bureau of Investigation, and community based organizations;
 - (6) In coordination and cooperation with the Sheriff-Coroner, review and analyze selected investigations by the I.A. Unit to determine whether departmental policies, practices and procedures should be reexamined to prevent the future occurrence of similar allegations of misconduct, and when warranted, develop, propose and make independent recommendations as follows:
 - (i) Regarding the outcomes of investigations and reviews, and
 - (ii) For revisions of the implicated policies, practices, or procedures.

- (7) Devise and recommend mechanisms to provide positive recognition and incentives to employees who perform duties in an exemplary fashion, e.g., the proper and appropriate use of force, integrity, professionalism, and other matters that frequently may be the subject of complaints;
 - (8) Set the operational philosophy of the OIR to ensure that the needs and goals of the Sheriff-Coroner Department, the community, and the County are met; and
 - (9) Create, with the Sheriff-Coroner, the written protocols referenced in subsection (e)(4) of this section.
- (e) The authority set out in subsection (d)(1)—(7) of this section shall pertain to the investigation of the following:
- (1) Uses of deadly force;
 - (2) Uses of force resulting in, or reasonably likely to result in, death or serious bodily injury;
 - (3) Deaths and serious bodily injuries occurring in custody;
 - (4) Any misconduct not otherwise identified within this ordinance that the Executive Director and the Sheriff-Coroner agree, by written protocol, should be reviewed; and
 - (5) Those allegations set forth in citizen, peace officer, or peace officer supervisor complaints which involve any of the following:
 - (i) Use, threat, solicitation or encouragement of unlawful, improper or excessive force;
 - (ii) Acts or threats of discrimination or disparate treatment or verbal slurs based on race, ethnicity, religious affiliation or belief, national origin, political affiliation, gender, disability or sexual orientation;
 - (iii) Sexual harassment;
 - (iv) The improper display or use of firearms, other weapons, or force;
 - (v) Falsification of government documents or reports;
 - (vi) Interference in, obstruction of, or improper influence over any investigation authorized by law or this ordinance in a manner that inhibits or compromises the impartial search for truth;
 - (vii) Making false or misleading statements in any investigation authorized by law or this ordinance;
 - (viii) Making false or misleading statements to peace officer supervisors;
 - (ix) Use of illicit drugs;

- (x) Use of an official position for personal or financial gain;
 - (xi) Bringing, or assisting or permitting others to bring, contraband to inmates or others in custody; and/or
 - (xii) Criminal conduct.
- (f) The OIR is not authorized to:
- (1) Compel by subpoena the production of any documents or the attendance and testimony of any witnesses.
 - (2) Incur County expense or obligate the County in any way without prior authorization of the County Board of Supervisors. Such authorization may be contained within any contract executed between the Executive Director of the OIR and the County of Orange.
 - (3) Disclose any information obtained in conducting inquiries, except as provided herein or as otherwise ordered by a court of competent jurisdiction. No confidential or privileged information shall be disclosed to anyone not authorized by law to receive it.
 - (4) Interfere with the performance of the statutory duties of the Coroner.
 - (5) Make any written or oral report concerning any complaint to any individual or body other than to the County Board of Supervisors or the Sheriff-Coroner, or to the public as provided for in this ordinance. In addition, all such reports shall be made under the direction, and with the approval of, the Executive Director. No staff member shall make any reports or public comment without such prior approval.
- (g) There shall be a form and log for citizen complaints as set forth herein.
- (1) The complaint form for law enforcement employees shall be substantially similar to that in use by the Sheriff-Coroner.
 - (2) The Executive Director or his designee shall keep a log of the name, address, and telephone number of the complainant as well as a copy of the complaint referred to the Sheriff-Coroner Department for its review.
 - (3) Such log as described in subsection (g)(2) of this section shall be considered a confidential record, and shall not be dis-closable or discoverable except as specifically authorized by law.
- (h) In the event that the County of Orange, either administratively or by ordinance, establishes a protocol or mechanism for mediating certain citizen, peace officer, or peace officer supervisor complaints, and if the Executive Director of the OIR, in his or her absolute discretion, determines that such complaints do not warrant exercise of the authority set forth in section 1-2-226(d)(1)—(7) of this article, the Executive Director may refer such complaint or complaints to the body selected by the County of Orange to provide such mediation.

(Ord. No. 08-004, § 1, 2-26-08) Secs. 1-2-227—1-2-249. - Reserved.

Appendix D: 2015 Amended Ordinance Establishing the New OIR

ORDINANCE NO. 15-022

AN ORDINANCE OF THE COUNTY OF ORANGE, CALIFORNIA,
AMENDING TITLE 1, DIVISION 2, ARTICLE 18 OF THE CODIFIED
ORDINANCES OF THE COUNTY OF ORANGE PERTAINING
TO THE OFFICE OF INDEPENDENT REVIEW

The Board of Supervisors of the County of Orange ordains as follows:

SECTION 1. Section 1-2-225 of the Codified Ordinances of the County of Orange is hereby amended to read as follows:

Sec. 1-2-225. - Purpose and intent.

It is the purpose and intent of the Board of Supervisors to establish an Office of Independent Review to perform the following functions:

- (a) Review systemic issues involving the Orange County Sheriff-Coroner Department, Probation Department, Office of the District Attorney, Office of the Public Defender and the Social Services Agency (hereinafter “relevant County Department(s)”) and serve as an independent resource and counsel for the Board in order to ensure accountability with regard to the performance and operations of relevant County Departments;
- (b) Review specific incidents occurring in relevant County Departments which may identify systemic issues with regard to the performance and operations of relevant County Departments; and
- (c) Provide a resource to ensure that high risk and potential liability issues are identified and addressed through corrective actions.

The Office of Independent Review shall exercise all powers vested in the Board under federal and state law that may be delegated by the Board.

SECTION 2. Section 1-2-226 of the Codified Ordinances of the County of Orange is hereby amended to read as follows:

Sec. 1-2-226. - Establishment of Office of Independent Review; Qualifications, Selection and Authority of Executive Director and Staff.

(a) The Board of Supervisors hereby establishes the Office of Independent Review (hereinafter "OIR"), which shall initially be comprised of an Executive Director, staff attorneys and administrative support staff as the Executive Director shall recommend are necessary.

(b) The Executive Director shall be an attorney licensed to practice law in the State of California, shall have had no imposition of discipline by any State or Federal Bar, and shall have had at least three (3) years' experience in conducting oversight of law enforcement personnel and departments. The Executive Director and all staff of the OIR shall be employees of the County of Orange. The Executive Director and staff attorneys shall hold an attorney-client relationship with the County of Orange. As a result of this attorney-client relationship, the Executive Director and staff attorneys shall have the same access to confidential records as the Office of County Counsel. The terms and conditions of employment of the Executive Director and of all staff of the OIR shall be set by the Board of Supervisors.

(c) The Executive Director shall be selected by the Board of Supervisors.

(d) The OIR shall, consistent with existing state law:

(1) Provide periodic status reports on all investigations and significant matters within the purview of the OIR to the Board of Supervisors and relevant County Department heads.

(2) Solicit from, and provide regular feedback to, the Board of Supervisors regarding ongoing and completed projects of the OIR through the following mechanisms:

(i) Regular debriefing of systemic review and reform projects;

(ii) Solicitation of Board members for areas of interest for systemic audits and review; and

(iii) Regular meetings with Board members and/or designates regarding significant cases and reviews.

(3) Be authorized to provide such periodic and special reports to the public using traditional reporting and social media concerning its activities and findings as it deems proper and appropriate.

(4) Be authorized to conduct substantive systemic audits and reviews of relevant County Department functions that impact relevant County Departmental and/or employee accountability and performance.

(5) Be authorized to work with County Counsel, County Risk Management and relevant County Department heads to review incidents and/or allegations implicating significant risk and/or liability and independently participate in and review the development of corrective actions.

(6) Be authorized to review County and/or relevant County Department policies and recommend reforms consistent with evolving best practices.

(7) Be authorized to facilitate interdepartmental referrals of complaints or allegations regarding the conduct of County employees and/or systems to the relevant County Department(s).

(8) In cooperation with the Sheriff-Coroner, coordinate and enhance the presence of independent jail monitors to report to the OIR.

(9) In coordination and cooperation with relevant County Department heads, provide ongoing legal counsel and advice to relevant County Department heads concerning the initiation, structuring and development of internal inquiries and investigations into alleged performance issues and/or misconduct of employees.

(10) In coordination and cooperation with relevant County Department heads:

(i) Monitor, as necessary and appropriate, investigations arising from complaints or custodial deaths or injuries;

(ii) Respond, as necessary and appropriate, to scenes of investigations;

- (iii) Have access to, and participate in, confidential meetings and proceedings in order to monitor cases in real time;
 - (iv) Provide advice and counsel to relevant County Department's internal review and/or internal investigative proceedings so as to ensure a thorough, unbiased, and impartial fact-finding process and consistent and appropriate conclusions; and
 - (v) Review and critique completed internal investigations and conclusions of internal investigations. No review or critique by the OIR of a completed internal investigation or the conclusions of an internal investigation may be used as the basis for taking punitive action against an employee.
- (11) Establish and maintain liaison with the District Attorney, Sheriff-Coroner Department, Probation Department, Public Defender, Social Services Agency, County Counsel, County Executive Office, County Human Resource Services Department, employee unions, the United States Attorney, the Federal Bureau of Investigation, and community based organizations;
- (12) In coordination and cooperation with the relevant County Department heads, review and analyze selected investigations to determine whether departmental policies, practices and procedures should be reexamined to prevent the future occurrence of similar allegations of misconduct, and when warranted, develop, propose and make independent recommendations as follows:
- (i) Regarding the outcomes of investigations and reviews, and
 - (ii) For revisions of the implicated policies, practices, or procedures.
- (13) Devise and recommend mechanisms to provide positive recognition and incentives to employees who perform duties in an exemplary fashion, e.g., the proper and appropriate use of force, integrity, professionalism, and other matters that frequently may be the subject of complaints;
- (14) Set the operational philosophy of the OIR to ensure that the needs and goals of the Board of Supervisors, the community, and the County are met; and
- (15) Create, with the Board of Supervisors and relevant County Department heads, the written protocols referenced in subsection (e)(5) of this section.
- (e) The authority set out in this article shall include the investigation and review of the following:

- (1) Uses of deadly force;
- (2) Uses of force resulting in, or reasonably likely to result in, death or serious bodily injury;
- (3) Deaths and serious bodily injuries occurring in custody;
- (4) Deaths and serious bodily injuries in which the person harmed has had official contact with relevant County Departments;
- (5) Any misconduct not otherwise identified within this ordinance that the Board of Supervisors, Executive Director and the relevant County Department head(s) agree, by written protocol, should be reviewed; and
- (6) Those allegations set forth in citizen or internally generated complaints which involve any of the following:
 - (i) Use, threat, solicitation or encouragement of unlawful, improper or excessive force;
 - (ii) Acts or threats of discrimination or disparate treatment or verbal slurs based on race, ethnicity, religious affiliation or belief, national origin, political affiliation, gender, disability or sexual orientation;
 - (iii) Sexual harassment;
 - (iv) The improper display or use of firearms, other weapons, or force;
 - (v) Falsification of government documents or reports;
 - (vi) Interference in, obstruction of, or improper influence over any investigation authorized by law or this ordinance in a manner that inhibits or compromises the impartial search for truth;
 - (vii) Making false or misleading statements in any investigation authorized by law or this ordinance;
 - (viii) Making false or misleading statements to relevant County Department supervisors and/or other officials;
 - (ix) Use of illicit drugs;

- (x) Use of an official position for personal or financial gain;
- (xi) Bringing, or assisting or permitting others to bring, contraband to inmates or others in custody; and/or
- (xii) Criminal conduct.

(f) The OIR is not authorized to:

- (1) Compel by subpoena the production of any documents or the attendance and testimony of any witnesses.
- (2) Disclose any information obtained in conducting inquiries, except as provided herein or as otherwise ordered by a court of competent jurisdiction. No confidential or privileged information shall be disclosed to anyone not authorized by law to receive it.
- (3) Make any written or oral report concerning any complaint to any individual or body other than to the County Board of Supervisors or the relevant County Department head, or to the public as provided for in this ordinance. In addition, all such reports shall be made under the direction, and with the approval of, the Executive Director. No staff member shall make any reports or public comment without such prior approval.
- (4) Affect the wages, hours, or working conditions of any County employee represented by a recognized employee organization, as defined under Government Code section 3501, subdivision (b).

(g) There shall be a form and log for citizen complaints as set forth herein.

- (1) The complaint form for employees shall be substantially similar to that in use by relevant County Departments.
- (2) The Executive Director or his or her designee shall keep a log of the name, address, and telephone number of the complainant as well as a copy of the complaint referred to relevant County Department heads for their review.
- (3) Such log as described in subsection (g)(2) of this section shall be considered a confidential record, and shall not be dis-closable or discoverable except as specifically authorized by law.

(h) In the event that the County of Orange, either administratively or by ordinance, establishes a protocol or mechanism for mediating certain citizen, peace officer, or peace officer supervisor complaints, and if the Executive Director of the OIR, in his or her

absolute discretion, determines that such complaints do not warrant exercise of the authority set forth in this article, the Executive Director may refer such complaint or complaints to the body selected by the County of Orange to provide such mediation.

This ordinance shall take effect and be in full force thirty (30) days from and after its passage and before the expiration of fifteen (15) days after the passage thereof, shall be published once in an adjudicated newspaper in the County of Orange.

THE FOREGOING was PASSED and ADOPTED by the following vote of the Orange County Board of Supervisors on December 15, 2015, to wit:

AYES: Supervisors: TODD SPITZER, ANDREW DO, LISA A. BARTLETT,

NOES: Supervisors: MICHELLE STEEL, SHAWN NELSON

EXCUSED:

ABSTAINED:

_____/s/_____

Robin Stieler, Clerk of the Board of Supervisors, County of Orange, California

Appendix E: Comparison of Key Aspects of 2008 Versus 2015 OIR Ordinances

Table 6 below provides a comparison of the key aspects of the 2008 OIR ordinance versus the 2015 OIR ordinance.

Aspect	2008 OIR	2015 OIR
Scope of oversight	Oversee Sheriff-Coroner's Department	Oversee Sheriff-Coroner's Department, District Attorney, Probation Department, Public Defender, Social Services Agency
Purpose and intent	<p>Focus on monitoring, assisting, overseeing, and advising the Sheriff-Coroner, by independently</p> <ol style="list-style-type: none"> 1. reviewing internal disciplinary investigations, and 2. reviewing the handling of in-custody deaths or serious injuries inside the Sheriff-Coroner's Department, to add transparency and boost public confidence. <p>Corrective action to prevent recurrence</p>	<p>Focus on acting as independent resource and counsel to the Board to ensure the five targeted agencies are held accountable for their performance and operations by</p> <ol style="list-style-type: none"> 1. reviewing systemic issues with respect to the performance and operations of the targeted agencies, 2. reviewing specific incidents that may identify systemic issues, and 3. working with County Counsel, County Risk Management, and department heads to ensure that critical incidents involving significant risk and/or liability to the County and are identified and addressed through corrective actions. <p>Preventive and corrective action to prevent occurrence and recurrence</p>
Organizational reporting relationship	Contract terms and conditions set by Board of Supervisors; contract managed by County Executive Officer and County Counsel.	Report to the Board of Supervisors

Aspect	2008 OIR	2015 OIR
Degree of independence of both the Board of Supervisors and the agency or agencies	Executive Director and professional staff were independent contractors, not County employees, responsible for their own work decisions, and not in the OCSD command structure, to enhance their independence from both the BOS and the OCSD. (The OIR executive secretary was a County employee.)	Executive Director and all staff will be County employees reporting directly to the BOS, and not in the reporting structure of any of the five agencies, to enhance their independence from the five agencies, but allow tighter direction by the BOS.
Responsibility for issuing reports	Quarterly status reports to the Board of Supervisors and Sheriff-Coroner; periodic reports to the public	Issue reports to Board of Supervisors, department heads of the five agencies, and the public. Enhance OIR reporting obligations to the Board of Supervisors
Location	Housed at Sheriff's Department	To be housed at Hall of Administration (with Board of Supervisors), to enhance their independence from the five agencies.
Preventive responsibilities	Review Sheriff-Coroner Department policies and practices and recommend improvements	Review department practices in all five departments and recommend changes based on evolving best practices
Jail oversight	N/A	Add jail monitors reporting to the OIR

Table 6. Comparison of the 2008 OIR ordinance to the 2015 amended OIR ordinance

Appendix F: Prior Orange County Grand Jury Reports Mentioning the OIR

Grand Jury Year	Report Title	OIR-Related Findings and Recommendations	Responses
2008-2009	Condition of Orange County Jails	Recommendation 14 — the OIR should submit a written progress report on a quarterly basis as contractually required.	Response to recommendation 14 (OIR) — recommendation has been implemented. Three update reports submitted so far; OIR will provide quarterly presentations to the Board.
2010-2011	Review of Orange County Detention Facilities	Recommendation 4 — Continue to assess and present evidence-based data from the S.A.F.E. Division of the Orange County Sheriff's Department to enhance transparency, provide effective law enforcement and reduce civil litigation.	<p>Response to recommendation 4 (Sheriff) — Recommendation has been implemented.</p> <p>The S.A.F.E. Division presents quarterly Force Trend Reviews and annual Operational Assessments to all command staff. ... Representatives from County Counsel and the Office of Independent Review, a civilian oversight committee established by the Board of Supervisors, actively attend and participate during all reviews and assessments. The Orange County Sheriff's Department will continue these reviews and work toward enhancing their effectiveness and utility.</p>
2011-2012	Detention Facilities Report – Part I – Adult	<p>Finding 6 — The Office of Independent Review provides a valuable risk management service to the county but may be improperly assigned and underutilized. Direct reporting to the Board of Supervisors results in inconsistent expectations, direction, and evaluations. Additionally, there is a perception that the operation is unduly influenced by the Sheriff's Department. This is reinforced by the physical location of the OIR office in the OCSD headquarters.</p> <p>Recommendation 6 — The Board of Supervisors should review the role and responsibilities of the Office of Independent Review with a view toward expanding the scope of work to include the Probation Department facilities and reassign</p>	<p>Response to Finding 6 (OIR & Board of Supervisors (BOS)) — Disagrees partially with finding 6.</p> <p>The Grand Jury's report accurately identifies some of the challenges OIR has faced... More effective communication from the Executive Director of OIR to the Supervisors has lessened some of the frustrations cited by the Grand Jury... [T]he Board of Supervisors believes that OIR's place in the County organizational chart is appropriate. Moreover, it believes that OIR's physical location helps promote the access and regular contact that contribute to its monitoring function.</p> <p>Response to Recommendation 6 (OIR & BOS) — The recommendation will not be implemented because it is not warranted or is not reasonable.</p> <p>OIR provides civilian oversight for the County's Sheriff's Department from an independent, outside perspective and coordinates with various public and private groups to ensure that relevant issues are identified and addressed. Stakeholders include the Board of Supervisors, County Counsel, District Attorney, County Executive Office, Human Resources, Human Relations Commission, employee unions, relevant federal agencies, and various community-based groups</p>

Grand Jury Year	Report Title	OIR-Related Findings and Recommendations	Responses
		<p>management control to the Chief Executive Officer as part of the County Risk Management operation. The OIR office should be relocated to the Hall of Administration.</p>	<p>and individuals.</p> <p>In 2010, the Board of Supervisors added a provision to the contract of OIR's Executive Director that establishes an attorney-client relationship with the Probation Department and allows OIR to perform the recommended monitoring function for selected cases. That option has been utilized on selected occasions, and the Board of Supervisors can also expand the role on an as-needed basis in the future.</p> <p>OIR's Executive Director provides regular status reports to the Board of Supervisors "on all investigations and significant matters within the purview of OIR." Additionally, OIR provides written reports to the Board to address the outcome of individual matters relating to the OIR oversight responsibilities. Some of these reports may be confidential and protected by the attorney-client privilege; in other instances, the Board may choose to release the reports in a manner consistent with state law and the privacy rights of involved parties. OIR should continue to report to the Board rather than reassigned to the County Executive Officer to enable the Board continued oversight and involvement in OIR activities.</p> <p>Although the physical OIR office location is located within the Orange County Sheriff Department headquarters, OIR's Executive Director and professional staff of the OIR are independent contractors – not employees of the County or part of the OCSD chain of command. This promotes the objectivity of OIR's findings and recommendations. The location of the office is critical to OIR's ability to respond in person to critical incidents, consult regularly with OCSD decision-makers, and review OCSD operations, files, and records in an unfettered way.</p>
<p>2011-2012</p>	<p>Detention Facilities Report – Part II – Juvenile, Orange County Juvenile Detention and Treatment Facilities</p>	<p>Finding 6 — The risk management aspects of operating juvenile detention and correctional facilities could benefit from the availability of the Office of Independent Review to follow-up on serious behavioral incidents and assist in investigating allegations of staff</p>	<p>Response to Finding 6 (OIR) — Agrees with finding.</p> <p>Response to Recommendation 8 (BOS) — The recommendation has been implemented.</p> <p>In 2010, the Board of Supervisors added a provision to the contract of OIR's Executive Director that establishes an attorney-client relationship with the Probation Department and allows OIR to perform the recommended monitoring function for selected cases. That option has been utilized on selected occasions, and the Board of Supervisors can also expand the role on an</p>

Grand Jury Year	Report Title	OIR-Related Findings and Recommendations	Responses
		<p>misconduct.</p> <p>Recommendation 8 — The Board of Supervisors should expand the scope of work for the Office of Independent Review to include reviews of the Probation Department Juvenile facilities operations.</p>	<p>as-needed basis in the future.</p>
<p>2012-2013</p>	<p>A Call for Ethical Standards: Corruption in Orange County</p>	<p>Finding 3 — Orange County reacted to the 1994 bankruptcy scandal by creating a patchwork of oversight offices to audit financial, performance, and professional standards. These offices have varying levels of independence, jurisdiction and legislative support. They need to be accountable as well.</p> <p>Finding 5 — Citizens need a clearinghouse to voice complaints about actual and perceived incidents of corruption and unethical behavior by public officials.</p>	<p>Response to Finding 3 (BOS) — Disagrees partially with the finding.</p> <p>The County of Orange has established a number of oversight bodies and functions over time in order to provide adequate levels of review. The County does not agree with the characterization of these entities as a “patchwork.” Rather, the County views these entities as a network of oversight functions with specialized expertise in financial, operational, and legal oversight. These bodies include the Internal Audit Department, the Performance Audit Department, the District Attorney’s Office, the Office of Independent Review, the Audit Oversight Committee, the Treasurer’s Oversight Committee, the Auditor-Controller, and the Compliance Oversight Committee. Also included in this list of oversight functions is the Grand Jury itself. The County is also scrutinized by a variety of oversight bodies at the state and federal level for compliance with a litany of rules and regulations. The County agrees that these entities need to be accountable and believes that their accountability lies with the electorate.</p> <p>Response to Finding 5 (BOS) — Agrees with the finding.</p> <p>Again, this “finding” is actually a generic recommendation. There are several avenues already in existence for citizens to voice such concerns, including the District Attorney’s Office, the Internal Audit Fraud Hotline, the California Attorney General, the Office of Independent Review, and the Fair Political Practices Commission, as well as the Grand Jury itself.</p>
<p>2012-2013</p>	<p>Detention Facilities Report: (Part II Juvenile) How Do We Know If We Are Taking Care of Our</p>	<p>Finding 6 — The incident between a male and female detainee at Juvenile Hall in February, 2012, was investigated immediately by</p>	<p>Response to Finding 6 (Probation & BOS) — Agrees with the finding.</p>

Grand Jury Year	Report Title	OIR-Related Findings and Recommendations	Responses
	At-Risk Juveniles	the Orange County Probation Department with oversight from the Office of Independent Review. Some of the juvenile correctional officers that were implicated were experienced officers.	
2013-2014	Ethics and Campaign Reporting: Why and How to Implement Stronger Oversight, Transparency, and Enforcement	Finding 3 — Orange County is subject to the same potential for corruption as anywhere else, yet monitoring and enforcement of ethics, and campaign and lobbyist reporting in the County is deficient in a number of areas, including oversight, law and policy advice and recommendations, audits, coordination, transparency, and independence.	Response to Finding 3 (BOS) — The Board disagrees wholly with this finding. By suggesting that the monitoring and enforcement of ethic, campaign, and lobbyist reporting is “deficient,” the Grand Jury suggests that the County is somehow not meeting a legal or other minimum standard. The Count of Orange <u>exceeds</u> legal requirements for the areas mentioned above. For example, the Board has established a number of oversight bodies and functions, including the Internal Audit Department, the Performance Audit Department, the Office of Independent Review, the Audit Oversight Committee, the Treasurer’s Oversight Committee, the Compliance Oversight Committee, and the Orange County Fraud Hotline. In addition, the County already has limits on campaign contributions in County elections through the Orange County Campaign Reform Ordinance (Codified Ordinances of Orange County, Section 1-6-1 <i>et seq.</i>) The Board has adopted the Orange County Gift Ban Ordinance (Codified Ordinances of Orange County, Section 1-3-21 <i>et seq.</i>) that prohibits County elected officials and high-level employees from receiving gifts from persons doing business, or seeking to do business, with the County. Additionally, the Board has adopted an ordinance requiring the disclosure of lobbyists and lobbying activities through the Lobbyists Registration Ordinance (Codified Ordinances of Orange County, Section 1-1-8 <i>et seq.</i>) These oversight agencies and local laws, all of which operate to prevent corruption and the appearance of corruption, are in addition to the required responsibilities of the District Attorney and County Auditor-Controller.

Table 7. OIR-related findings, recommendations, and responses in prior GJ Reports

Appendix G: History of the OC Jailhouse Informant Controversy

In May 2014, a defendant pleaded guilty to eight counts of first degree murder for the October 2011 mass murder of his ex-wife and seven co-workers, customers, and bystanders at a hair salon in Orange County. Earlier in 2014, the public defender had filed a motion on behalf of his client, alleging prosecutorial misconduct in the use of a jailhouse informant and in the failure to provide evidence related to the informant to the defense during discovery. The motion sought the recusal of the District Attorney's Office from further involvement in the trial, as well as a prohibition on the death penalty as a possible sentence.

After months of hearings on the lengthy motion, along with thousands of supporting documents, the judge on the case ruled in August 2014 that misconduct by law enforcement had occurred, but the misconduct was negligent rather than malicious, and hence did not merit the requested recusal or prohibition.

More discovery requests by the public defender produced further evidence of alleged misconduct. This formed the basis of the November 2014 motion for reconsideration of the judge's August ruling, leading to further court hearings on the motion in early 2015.

In March 2015, the judge issued a supplemental ruling that still refused to prohibit the death penalty. However, the ruling stated that the new evidence revealed serious discovery violations which had deprived the defendant of due process. On the basis of a legal theory around conflict of interest, it held the District Attorney responsible for the discovery violations of its law enforcement partners and recused the entire OCDA from the sentencing phase of the trial to protect the defendant's right to a fair trial. The ruling called for the California Attorney General to take over the prosecution of the case. (Supplemental, People)

Subsequently, the California Attorney General has filed an appeal to overturn this ruling and return the case to the Orange County District Attorney. That appeal is still pending as of June 2016. (Appellant's, People) At the same time as the appeal, at the request of the OCDA, the California Attorney General initiated an investigation into the OCDA and OCSD's alleged illegal use of jailhouse informants. (Saavedra, State) That investigation is also still on-going as of June 2016.

Half a dozen cases have been affected by the jailhouse informant controversy, including reduced charges in some cases due to use of informants in those cases, and previous verdicts overturned in other cases. For more information, see the series of articles and extended coverage in *The Orange County Register's* "Inside the Snitch Tank" feature. (Humes, Inside) Other coverage can be found in the *OC Weekly*, the *Voice of OC* web site, the *Los Angeles Times*, and other newspaper articles in the Works Cited list of this report.

**PROCUREMENT
BIG BUDGET, LOW PRIORITY**



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EXECUTIVE SUMMARY

Orange County spends \$3 billion each year on contracting for, and purchasing of, goods, services, and capital projects, referred to as “procurement.” Since 1998, County officials have been advised that the procurement structure and function has not been working well. Recommendations for improvement have gone largely unheeded while County Procurement has fallen behind industry best practices.

The 2015-2016 Grand Jury reviewed previous Grand Jury report, a consultant report (Neill II) and audit reports about Orange County Procurement and considered their recommendations. After its own inquiry the Grand Jury concludes that Orange County officials do not view procurement functions as flawed or in need of attention and correction. Many employees assigned to procurement tasks - at any level – lack job-related training, education or experience. Procurement functions are spread across all 26 County agencies when management by a single agency could achieve cost savings and improve performance, consistency and accountability. The Grand Jury has identified the following areas of concern about the operation and management of procurement in the County of Orange.

- Failure to implement numerous prior recommendations by three Grand Juries, Internal and Performance audits, and an external procurement study.
- Failure to require revision of the *Contract Policy Manual – 2012 (CPM)*.
- Failure to actively recruit a procurement professional as County Purchasing Agent, and instead transferring an existing manager into the position without recruitment or testing.
- Failure to place all County procurement functions under one agency to promote improved performance and cost savings.
- Failure to recognize the value of national professional procurement organizations for their research, advanced training and certification programs.
- Failure to offer competitive compensation to employees in the Purchasing/Procurement Job Classification Series.

Addressing the procurement function and its deficiencies appears to be a low priority to County officials which compromises its efficiency and effectiveness. Elevating the Orange County Procurement Office (CPO) to a modern, high-performing operation that provides appropriate support and oversight cannot happen until it is a priority to County officials.

BACKGROUND

The Importance of Procurement

The County of Orange (the County) spends \$3 billion each year on “procurement”, an interchangeable term for purchasing and contracting. The title is descriptive - “Procurement” means to buy or obtain goods and services. Taxpayers expect procurement to be performed honestly, fairly, effectively and professionally.

Although the title makes the function sound simple, procurement is actually quite complex in large organizations such as Orange County - a complicated system that exceeds mere “buying” and requires knowledge and skills in critical elements such as:

- Finance and accounting,
- Contract law and negotiation,
- Contract planning, management and oversight,
- Marketing, and
- A working knowledge of all County functions and their inter-relatedness.

In the larger sphere, procurement is a central function in both the public and private sector. Procurement Management is a recognized profession with academic degrees in procurement-related majors such as Purchasing, Finance, Accounting, and Acquisitions Management. According to professional literature, well run procurement can save the government millions each year (Warn). Orange County, however, has entrusted procurement to “generalist” managers rather than to procurement professionals.

Expenditures of \$3 billion require strong professional leadership and effective management. A successful procurement operation incorporates clear and comprehensive policies and procedures, executed by qualified and trained staff who are carefully managed by a capable administrative team. The Grand Jury review indicates that Orange County is struggling to meet this standard for countywide procurement, as outlined in previous Grand Jury and audit reports. This report goes beyond the County Procurement Office (CPO) to review issues throughout the procurement process.

In the County bankruptcy of 1994, the Orange County General Services Agency (GSA) was disbanded and procurement and contracting responsibilities were delegated to each agency as part of the recovery plan. This decentralization of procurement was never corrected and has led to today’s structure wherein 240 certified Deputy Procurement Agents (DPAs), with 40 different job titles, are spread across 26 different agencies.

Historical Concerns

Recent reports by 1997-1998, 2002-2003 and 2013-2014 Grand Juries, a 2009 Procurement Policy Study (O’Neill II), 2014 County Internal Audits, and 2014 County Performance Audits each voiced similar concerns about OC Procurement structure and performance.

- A de-centralized structure that contributes to inconsistency, non-compliance with County Policy, waste, and fragmented performance.
- An out-of-date and incomplete *Contract Policy Manual(CPM)*.
- A lack of procedure manuals that are procurement-specific and approved by the County Procurement Office (CPO).
- Management expectations that the dispersed procurement staff will comply with the *Contract Policy Manual*, but does not monitor and measure performance.
- Training that does not adequately prepare employees for the responsibility for high value expenditures.
- Management that does not always meet goals and objectives.

The findings of those prior reports dealt generally with quality of leadership, inconsistency, and poor execution. Prior recommendations for change from multiple sources have not prompted County action. The 2015-2016 Grand Jury followed up on those prior reports to assess the current status of the Orange County procurement system, and to evaluate the role of an outdated organizational structure and a curious staffing practice. The risk is high. A procurement error rate as low as 1% could amount to a \$30 million loss each year.

METHODOLOGY

This investigation included:

- Interviews with all levels of County Procurement employees, vendors and contractors.
- Interviews with County Managers and Executives.
- Interviews with high-ranking procurement executives from four like-sized California counties.
- Review of Job Specifications for Procurement staff positions in Orange County and other counties.
- Literature searches about procurement, best practices, and organizational structure.
- Review of numerous Board of Supervisor Agenda Staff Reports (ASRs).
- Observation of Board of Supervisor meetings and review of minutes.
- Review of the County *Contract Policy Manual – 2012*.
- A survey of Deputy Purchasing Agents (DPAs) (Appendix C).

SCOPE OF INVESTIGATION

The County’s procurement function is too large and complex for the Grand Jury to investigate and analyze in total. Therefore, this investigation is focused on:

- The history of Orange County procurement’s issues, and County officials’ action or inaction in response,
- The County-wide *Contract Policy Manual*,
- Procurement’s organizational structure,
- The status of the procurement process,
- Annual contract reviews, and
- Staffing and training issues.



INVESTIGATION AND ANALYSIS

County Procurement’s Organizational Structure

The procurement function in Orange County is divided into several parts, each with certain duties and authorizations. The County Procurement Office (CPO) is headed by the County Purchasing Agent (CPA) who reports to the Chief Financial Officer (CFO) who is part of the County Executive Office (CEO) (Table 1). The County Procurement Office is a *work unit* of the CEO, and the County Purchasing Agent is a *person* who manages the Procurement Office. The Procurement Office is responsible for about 45% of the total county purchasing (Performance Audit p.5). Contracting for Real Property, Human Services and Public Works has been delegated to some or all of other agencies (Table 6) who are expected to comply with the *Contract Policy Manual (CPM)* and/or the *Design & Construction Procurement Policy Manual (DCP)*. The CPO has some specific administrative functions for all procurement, such as standardized policy, standardized training, and Regional Contract Agreements (Table 1). There are a variety of contract types depending on purpose and value (Appendix B).

NOTE: Throughout this report, the reader will find variations in the titles of the County Procurement Office (CPO) and the County Purchasing Agent (CPA). This reflects changes over time in formal titles, the use of titles interchangeably, informal titles, and abbreviated titles.

Table 1: Orange County Procurement Organizational Structure

<u>Board of Supervisors</u>			
County Executive Officer Chief Financial Officer	County Executive Officer		
 County Procurement Office County Purchasing Agent 20 procurement staff	 25 County Agencies 25 Agency Heads 220 Deputy Procurement Agents		
Material ~ Supplies ~ Contracts ~ Administration: • Policy Manual	Real Property Contracts	Human Services Contracts	Public Works Contracts

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<ul style="list-style-type: none"> • Procedures • Training • Technology programs • Compliance Reviews • Regional Contract Agreements • Surplus Sales 	<p>Each agency head manages its own contract functions and procurement staff. Contract requests are submitted directly from the agency to the CEO/Board of Supervisors.</p>
--	---

This organizational structure in which the individual agencies conduct their own procurement operations can develop into what is commonly referred to as “silos”, with identifiable characteristics:

- Work units that develop an isolated mentality,
- Resistance to change,
- The work units seldom interact, coordinate or communicate with other units, and
- Are viewed, in business circles, as negative to successful organization management (Bianca, p.1).

The Orange County de-centralized procurement structure is not consistent with like-sized California counties (Table 13), and does not reflect the industry and professional standards which recommend centralized procurement (deCourcy, p. 3).

This investigation was prompted by a natural curiosity about how taxpayers’ dollars are spent for goods and services, and how adequately the problems identified by previous Grand Juries and auditors have been addressed. Periodic media reports about County contracting irregularities keep the appearance of procurement practices and expenditures in the forefront.

- “OC Watchdog Report validates doubts on county contracting”, *Orange County Register* June 16, 2014.
- “Competitive contracting helps taxpayers”, *Orange County Register*, January 23, 2015.
- “OC feels danger of IT contracting”, *Orange County Register*, April 9, 2015.
- “Medical contract approved amid protest”, *Web*, September 9, 2014.

Recent History of Reviews and Audits of Procurement

OC Grand Jury 1997-1998

The 1997-1998 OC Grand Jury examined the County’s post-bankruptcy procurement functions in its report, *Study of the County of Orange Procurement System*, and rated them as,

“ . . . ineffective and counter-productive (p. 84).” The key Recommendations in that Grand Jury report (pp. 86-88) and the Board of Supervisors (BOS) responses are:

Table 2: 1997-1998 Orange County Grand Jury Recommendations with Responses

1997-1998 Grand Jury Recommendations	BOS Responses
That the contracting process be corrected to eliminate personal or professional favoritism.	Implemented
That the fragmented County procurement system be replaced with a cohesive and integrated system [centralization] based on the <i>Model Procurement Code</i> [a state model popular at the time] and that the <i>County Contract Policy Manual</i> (since renamed the <i>Contract Policy Manual</i>) be expanded to include a number of new guidelines.	Not Warranted
That procurement functions be electronically tracked and documented thoroughly.	Not Warranted
Create a Chief Procurement Officer with expanded authority and specified duties including review of all procurement submissions to the Board of Supervisors.	Not Warranted
Conduct annual contracting compliance reviews.	Implemented
Require that all personnel in contracting positions have related experience, education and training.	Implemented, but not in current practice in 2015.
Establish a Contracts Council and Purchasing Council of County procurement staff to advise the Chief Purchasing Agent.	Implemented

The findings of this almost twenty-year-old OC Grand Jury report highlights the fact that many of the key issues identified then still exist, as borne out in subsequent audits studies, and Grand Jury investigations.

OC Grand Jury 2002-2003

The 2002-2003 OC Grand Jury investigated specific contracting practices that allowed a one year, \$285,000 consulting contract to become a \$1.46 million, two year obligation. In its report, *Questionable Contract Management*, the 2002-2003 OC Grand Jury attributed this unauthorized contract expansion to three actions by the contracting agency (p.3):

1. A significant change in the scope of the project.
2. An increase in the billing rates of the consultant firm.
3. The addition of a new project to the contract.

None of the three actions were authorized during the contract period and appeared to violate terms of the *Contract Policy Manual*. The Grand Jury found that the contracting agency had changed the terms of the contract without authorization and without competitive bidding, and that the Board of Supervisors had approved the unauthorized expenditures retroactively.

The Grand Jury recommended (p. 4) that:

- The County Executive Officer investigate the contract irregularities and take appropriate action. ***The BOS agreed to implement the recommendation.***
- The BOS appoint a committee of experts to examine contracts for the past three years to determine if other contracts had exceeded authorized spending. ***The BOS responded that this recommendation was too costly to pursue, but they will develop procedure to prohibit future contracts exceeding authorized expenditure.***
- The BOS implement procedures to prevent future occurrences. ***The BOS agreed to implement and directed the County Purchasing Agent to develop a policy for Board approval and to include in Contract Policy Manual.***

The 2002-2003 OC Grand Jury investigation revealed a lack of proper review and attention to detail in the contract approval and monitoring process. The Grand Jury was not able to determine whether effective action was taken to correct the problems.

Procurement Management Review – Final Report (2009)

In 2008 Orange County engaged the National Institute of Governmental Purchasing (NIGP) to conduct a review of business process and current practices of the County's overall procurement program. Many of the areas reviewed in the 2009 report repeat elements found in the Grand Jury and audit reports both before and after this report. Relevant findings included:

- The need for a Chief Procurement Officer with relevant, recent experience in public procurement and in large-scale procurement, with demonstrated executive and organizational ability,
- Centralized oversight of Decentralized Procurement,
- The County Purchasing Agent should set the qualifications and training for DPAs,
- DPA professional development should include experience, formal education, professional certification, and advanced training,
- The County lacks procedures manual that can standardize and consistently apply purchasing practices,
- The *Contract Policy Manual* mixes procedures and regulations and does not cover such things as Scope of Work Preparation, Pre-qualification in request for proposal, and using best value bid (Appendix E),
- Orange County's agenda process is time and resource intensive and extends the process by up to 20 weeks,

- Outside influence on procurement decisions must be eliminated,
- The financial tracking system is limited and needs upgrading,
- Procurement data is non-existent handicapping assessment of the function, and
- The Procurement Process was complicated and inconsistent.

The report included 27 recommendations (Appendix E) and a twelve-month plan to phase in all the recommended changes and responsibilities (Appendix F). The County Executive Office submitted ASR 10-000734 to the Board of Supervisors on May 18, 2010 with recommendations for implementation of some, and further analysis of other report recommendations (Appendix G).

Of the 16 recommendations approved for implementation there are three which the Grand Jury was not able to confirm were actually achieved, and continued to be cited as issues in subsequent Grand Jury and audit reports.

- Develop detailed job descriptions for DPA positions including professional certification.
- Develop a mechanism to make changes and revisions to the purchasing manual.
- Establish County wide contracts, bid, and request for proposal standard document templates, approved as to form and locked.

Internal Audit – 2014

In February 2014 the County Internal Audit Department examined the contracts and procurement practices of the Public Works Department - one of the larger procurement operations (see Table 3).

Table 3: Number and Value of Public Works Contracts - 2014

# Contracts	Type of Expenditure	\$ Amount
15	Public Works Contracts	144, 220,123
16	Architect-Engineer Service Contracts	39,844,363
635	Change Orders and Contract Amendments	38,865,078
	TOTAL	222,929,564

(Source: Internal Audit 1225B, p. 3-4).

The audit focused on process effectiveness with specific attention to sole source contracts, architect-engineering contracts, change orders, and policy/procedure compliance. The primary findings were:

- The delegated authority for approving change orders was not formally documented.
- The required qualifications of employees authorized to approve change orders or contract amendments need to be formalized.
- The policies, procedures and forms were not standardized.

- There was insufficient monitoring and oversight by Public Works Administrative Services (Audit 1225B, p.10-11).
- Memos of Recommendations were not properly signed off.
- There was confusion about who was assigned to a procurement project, and their qualifications.
- Sole Source justifications were unclear 44% of the time (Audit 1225-C, 1).

The auditor’s findings reflect an environment in which many small mistakes occur, and a lack of adequate monitoring and oversight. Public Works agreed to make the necessary corrections and in December 2014 a re-audit determined the changes were achieved or correction was believed to be in-process. Final correction was not confirmed by the Auditor.

OC Grand Jury 2013-2014

Because the 1997-1998 OC Grand Jury’s Recommendations were never fully implemented, the 2013-2014 OC Grand Jury re-visited County Procurement practices and outcomes. In the Grand Jury 2013-2014 report, *Improving the County of Orange Government’s Multi-Billion Dollar Contracting Operations*, the general conclusion was that many of the issues cited by the 1997-1998 Grand Jury had not been corrected, and the whole procurement function remained in need of reorganization and upgrading. The major Grand Jury concerns were:

- Fragmented and inconsistent practices because of de-centralization,
- An outdated *Contract Policy Manual* in need of updating and expansion,
- Improper involvement of potential bidders in preparing Request for Proposals (RFPs) and Invitation for Bids (IFBs),
- Bid proposal evaluations that were mishandled or implemented improperly,
- Contracting irregularities,
- Poorly run bid procedures,
- Allegations of cronyism and undue influence, and
- Inadequate training requirements for procurement employees.

Table 4: 2013-2014 Orange County Grand Jury Recommendations with Responses

2013-2014 Grand Jury Recommendations	BOS Responses
Re-centralize the contracting effort to reduce the current fragmentation, inconsistency and inequity. Substantially reorganize intra-agency contracting/procurement and personnel assignments.	Requires further analysis – to be considered when <i>Contract Policy Manual</i> is revised in 2015.
The <i>Contract Policy Manual</i> revision of 2012 partially satisfied a recommendation of the 1997-1998 Grand Jury but is still not the	Requires further analysis as part of CPM revision.

comprehensive document that is needed, and should be revised and expanded, and reviewed regularly	
Expand training for Deputy Procurement Agents (DPAs) and others in Procurement/Contracting (P/C); increase training schedule and hours; and offer peer level collaborations quarterly. Add sample documents to training materials	Implemented. Training requirement increased from four to ten hours per year.
The County Executive Office (CEO) & Department Heads should ensure that their staff members with procurement responsibility focus primarily, or exclusively, on P/C as their principal work assignment	Not warranted. Each agency will decide on duties of its own personnel.

While the 2013-2014 Grand Jury made a strong case for re-centralization of County Procurement, no action has been taken. Even Board responses of “Requires further analysis” are linked to the revision of the *Contract Policy Manual*, which was scheduled for 2015 but never happened. The lack of a revised *Contract Policy Manual* leaves two of the four 2013-2014 Grand Jury Recommendations on hold.

Performance Audit -2014

On something of a parallel track to the Grand Jury investigation, the County’s Office of Performance Audit submitted to the Board of Supervisors its *Performance Audit of Countywide Purchasing* on June 17, 2014. The stated objectives of this comprehensive analysis were two-fold:

1. To assess the CPO’s (County Procurement Office) role in developing and implementing County wide procurement policies and procedures and ensuring that County agencies/departments are in compliance with these guidelines (p. 2).
2. To determine if management and staff are effective and efficient in accomplishing their procurement business objectives (p. 2).

The Performance Auditor’s report did not list clear findings about the two audit objectives. Instead, the report re-directs the reader to comments about what the County Procurement Office *could* do [emphasis added], such as champion efforts to standardize, enhance, and coordinate the County’s collective procurement activities. Overall, the audit finding was that the County Procurement Office was, “making progress” (p. 2). The Performance Audit Conclusions (p. 33) did not focus on new or expanded goals and objectives, but on continued effort to meet past recommendations, and that, “. . . progress can only continue by ensuring that,

- Standardized policies and procedures are communicated, interpreted and implemented in a consistent fashion;

- Deputy Purchasing Agents have the knowledge and resources necessary to effectively fulfill their purchasing duties;
- Countywide contracts are negotiated and managed effectively;
- Purchasing data is collected, analyzed and shared with relevant Stakeholders; and
- Opportunities to increase the County’s purchasing power through strategic sourcing and other approaches are identified and utilized.”

In an effort to move the agency forward, the Performance Audit report listed 30 recommendations (Performance and Appendix A) across a wide array of functions for the County Purchasing Agent to complete. Key recommendations were to:

- Update the *Contract Policy Manual* (CPM) every two years,
- Develop a comprehensive *Procurement Procedures Manual*,
- Improve enforcement of certification requirements for Deputy Purchasing Agents (DPAs),
- Develop and track Key Performance Indicators (KPIs) to measure Procurement performance,
- Actively monitor use of Regional Cooperative Agreements (Appendix B),
- Identify strategic sourcing opportunities, and
- Coordinate implementation of procurement-related IT systems.

A Board of Supervisors’ sub-committee reviewed the 30 audit recommendations, concurred with all of them, and added 10 recommendations of their own (Performance) (see Appendix C for entire list and current status). The CPO agreed to implement the recommendations within six to twelve months (by June 2015). Table 5, below, summarizes the implementation of the recommendations. Most significant is that two of the recommendations that the BOS identified as their top priorities remain uncompleted:

Priority #1: Revising the *Contract Policy Manual* by June 2015.

Priority #3: Creating procurement procedure manual by October 2014.

Table 5: Status of 2014 Performance Audit and BOS Recommendations as of March 2016

Of 40 Recommendations, Number Completed	Number of Recommendations	Percent of Total
Within time frame – June 2015	20	50.0
Completed After June 2015	11	27.5
Pending/On Hold	9	22.5

Source: *Performance Audit of Countywide Purchasing – 2014*
(See Appendix A for complete list and status.)

Policy and Procedure

Comprehensive policies and procedures are foundational to an effective, efficient procurement operation (What). To clarify,

- **Policy** establishes the philosophical principles and goals that guide operations or functions and are relatively stable over time.
 - *Example: It is our policy to be responsive to requests for information*
- **Procedures** are the step-by-step instructions to complete a function or task and may need regular modification and updating to accommodate such things as policy change, law, regulation, demand, resources, technology etc.
 - *Example: Respond to a request for information within six calendar days, using form 97-000*

Contract Policy Manual

The stated purpose of the Orange County *Contract Policy Manual* (CPM) is to govern all County procurement, purchasing and contracts (p.5). Last revised in 2012, the CPM was scheduled for major revision in 2015 but that never happened. The CPO reported to the Grand Jury that the CPM would be revised by an unspecified date in 2016, but one procurement manager estimated that a more realistic completion date was sometime in mid-2017. Because the CPM is so central to the County’s \$3 billion procurement expenditures, this repeated delay is of concern and, again, reflects low priority status.

Meanwhile, during the repeated delays in revising the overarching *Contract Policy Manual*, an additional *Policy Manual* was under development to ensure consistency in Public Works projects. While the Internal Audit – February 2014 included comments about a need to standardize policy, procedure and forms, there was no definitive recommendation to create a separate policy manual. In early 2014 a multi-agency task force, including the County Purchasing Agent, began meeting regularly to develop components of this Public Works-specific policy manual. In January 2015, OC Public Works submitted to the BOS its *Design & Construction Procurement Policy Manual* (DCP) which was approved January 27, 2015 (Agenda Staff Report 14-001799). That ASR states the Public Works DCP is,

”...to ensure countywide standardization and oversight of the design and construction contracting process for public works projects.” Public Works, the County Procurement Office and other agencies worked together to revise public works policies, “. . . **to supersede those sections of the CPM** [emphasis added] (ASR 14-001799 p.2)”

The Board’s approval of the DCP appears to diminish the authority of the *Contract Policy Manual*. At the same time, it is noted that the County Procurement Office prioritized its time and resources to work on this policy manual for Public Works, instead of devoting that time and effort to revising the outdated *Contract Policy Manual*.

Responses to Grand Jury inquiries about the delay in the CPM revision paint a very clear picture that everyone is waiting for someone else to get the revision project moving again.

- A senior CPO executive explained that the CPO is waiting for direction from the Board of Supervisors as to changes needed, and due date.
- Some members of the Board of Supervisors, and a senior member of the County Executive Office say they are waiting for the Chief Purchasing Agent to make recommendations, and schedule a review date.

The CPO asserts that in preparation for the CPM revision, the Purchasing Council and agency heads have submitted revision suggestions, but no follow-up discussion sessions followed and the CPM revision project continues to be “on hold.”

Even though the CPM has not been revised, policy still needs updating regularly and the changes communicated to staff. As a stop gap measure, the CPO issues single-focus update memos to staff (electronic and hard copy) but has no tracking mechanism to ensure that the updates are actually received or universally understood and followed. Access to these updates is also available through the Procurement website but the Grand Jury found that the menu is confusing and it took some effort to find the updates which are listed under, “Memos & Directives”, not under “Policy Changes.” For instance, the Grand Jury located, a document titled, *Consolidated Board Policies on Agreements/Contracts Approved by the Board*, dated May 14, 2015 (Consolidated). The item is not attributed to an agency or person, states that it was presented to the Board of Supervisors for approval, but no approval date is noted. This document cannot be located anywhere on the County Website so the authenticity of this item is in question. Some DPAs said that the updates are at times difficult to decipher because changes are not highlighted for quick and easy reference - underlines, bold-face type, color, margin marks, or italics.

With an out-of-date CPM, no regular revision, and a poorly tracked system of individual policy updates, procurement deficiencies continue. The 2014 *Performance Audit* described, and many procurement staff confirmed, a CPM that is vague, confusing and incomplete, and this lack of clarity leads to financial and operational mistakes (*Performance Audit* #131404 p.7). If staff have questions that cannot be resolved by consulting the outdated CPM and updates, they were expected to contact the CPO by phone or email for answers/interpretation. According to the CPO, it is too early to evaluate the performance of this “help desk” approach.

The uncertainty remains - how can procurement functions work well without an up-to-date *Contract Policy Manual*? Revising the CPM is repeatedly claimed as a priority, but has yet to be done.

A final word about policy. In reviewing Agenda Staff Reports (ASRs) and observing Board meetings the Grand Jury noted occasions when a Board member appeared to disregard contracting policy, ignored staff contract recommendations, approved contracts retroactively, awarded contracts to a higher cost bidder, or sent RFP evaluations back to staff for re-scoring, etc. While the Board member taking such action may have felt justified, the public may not understand. The Board of Supervisors, in its leadership role, is expected by the public to demonstrate the highest standards. When Board members appear to disregard policy they risk making policy appear meaningless to the public and the workforce.

Procurement Procedure

Procedures are the step by step instructions on how to complete specific tasks or functions – anything from how to complete a purchase order, to how to confirm contract compliance. Over several years, recommendations have gone to the Board of Supervisors to create a county-wide *Procurement Procedure Manual* (PPM) (Audit 1225 C). In researching procedures, the Grand Jury is concerned that a single *Procurement Procedure Manual* may not be realistic because of the variety of purchasing, services, and contracting. Instead, several task-specific *Procurement Procedure Manuals* may better serve the need. What the Grand Jury views as essential is that any procedure manual should be reviewed and approved by the CPO, ensuring compliance with the *Contract Policy Manual* and that each is in consistent format. Based on interviews with procurement staff at all levels, including discussion of policy and procedure, the Grand Jury's impression was that no procedure manual existed. Then, an agency mid-level manager produced a procedure manual titled, *Navigating the Request for Proposal (RFP) Process 2012*, published by CEO Procurement Office, County of Orange. Through hours of interviews with executives and managers only this one individual revealed the existence of this manual.

A *Procurement Procedure Manual*, standardized in format and specific to each major function, would benefit performance and process. The lack of readily available job-specific procedures to guide DPAs risks inconsistency, mistakes and errors.

Table 6: Orange County Procurement Overview – 2015

Agency	Master Agreements Value	Master Agreements	# Procurement Staff
Health Care	\$ 1,057,370,267	225	29
CEO - Procurement			17
Info Technology			8
Admin			2
Real Estate	\$ 821,017,509	414	1
OC Community Resources	\$ 354,271,717	505	18
JW Airport	\$ 329,894,600	222	5
OC Public Works	\$ 166,017,509	575	33
Waste/Recycling	\$ 154,502,050	146	19
Sheriff/Coroner	\$ 93,952,132	599	13
Social Services	\$ 44,992,284	258	22
Auditor-Controller	\$ 14,504,720	15	7
District Attorney			
Public Administrator			7
Public Guardian	\$ 11,693,801	109	4
Probation	\$ 6,997,506	142	14
Clerk/Recorder	\$ 4,707,699	25	0
Register of Voters	\$ 3,685,900	37	4
Dana Point Harbor	\$ 3,224,666	13	0
Assessor	\$ 2,745,679	29	4
Child Support	\$ 2,607,678	63	4
Treasurer/Tax Collector	\$ 2,004,310	65	3
Public Defender	\$ 265,208	6	4
Human Resources	\$ 120,540	13	9
County Counsel	\$ 19,734	2	3
TOTALS	\$ 3,074,615,619	3463	240

Source: OC Procurement Office, Nov. 2015. Does not include 10 vacancies.

The Grand Jury is concerned that having this many high-value contracts spread out across the County system likely handicaps effective oversight and coordinated management. Although each agency’s procurement submissions are expected to comply with the County’s *Contract Policy Manual*, (CPM) the *Manual* does not require CPO review, approval or enforcement, so compliance with policy cannot be verified.

Procurement Management

According to professional literature, a critical factor for a successful procurement department is that “The chief procurement officer must be highly skilled and a team player” (Anklesaria p.1). The literature further describes the winning combination of a highly skilled procurement leader operating with authority, and the support of senior management. He/she must have the authority to execute the business strategy, and hire/fire staff, or the division will fail (Warn).

The OC Grand Jury agrees that management of the County’s \$3 billion procurement operation requires a “highly skilled” leader – one of solid credentials and experience. In a review of like-sized California counties (Riverside, San Diego, Santa Clara, San Bernardino) (Table 13) the procurement functions have a single manager responsible for all the county’s contracting and purchasing. Those counties have specific Minimum Qualifications (MQs) for the Procurement Manager position that include significant job-related education (accounting, purchasing, contracting), direct work experience, and progressive management responsibility (Job Specifications of the counties named).

Orange County has not set the same high standard for the County Purchasing Agent position. In fact, the Grand Jury could not even find a County position titled **County Purchasing Agent** in the County’s Human Resources (HR) Job Classification system (ocgov.com). There *was* an 11 year old recruitment flyer (posted in 2005) for “PURCHASING MANAGER – Administrative Manager III.” but apparently the title has since been abandoned as it is no longer in the HR system.

OC Grand Jury interviews and research reveal that Orange County fills some agency executive and management vacancies by simply transferring an Administrative Manager into the position as a “direct appointment” – often without recruitment or testing. In Orange County, most mid and upper management job positions are classified under one generic title, “Administrative Managers”, levels I, II, III. The job description does not refer to specific skills or experience such as Human Resources, Parks Management or Accounting. The Job Class specifications for Administrative Manager are vague and non-specific enough that they can be liberally interpreted to qualify almost any candidate. Even the list of functional abilities (e.g. able to ..., knowledge of ...) are meaningless without some verification process and without some testing process - written and oral – to assess desired skill sets. The lack of exclusionary minimum qualifications, such as education, work experience, or professional certification, allows less qualified candidates to be pushed forward without adequate scrutiny. An example of a better process was used by the County in selecting the Director of John Wayne Airport, the Director of Public Works and the very recent Director of Human Resources. Those appointments were made after a nationwide recruitment and a significant testing process – written and verbal (Candidate applications).

For the County Purchasing Agent position, however, the non-competitive, direct appointment reflects an outdated “Manager-is-a-Manager” philosophy which considers “management” as a stand-alone skill. Once learned or developed, the management skill is considered transferrable to any assignment so does not require assignment-related technical background, education, or experience. The “generalist” management skill is assumed to carry the manager through while acclimating to the new assignment and responsibility.

Even if this “generalist” management philosophy continues, some form of testing or assessment seems warranted to measure each candidate’s technical expertise, interpersonal skills and comparative strengths against other candidates. This would significantly increase the confidence level that the candidate selected is the most qualified for the assignment.

When the OC County Purchasing Agent position came vacant several years ago, the County transferred an manager into the vacancy. Although well-liked and trusted, the appointee was at a distinct disadvantage for lack of procurement-related education or experience. This lack of job-related background or qualifications necessitated a substantial period of self-education, and dependence on subordinate staff, which may explain why during the past several years, a number of goals and objectives have not been achieved.

- Revise the *Contract Policy Manual* by the 2015 target date.
- Complete Audit and Board of Supervisors recommendations of 2014 by June 2015.
- Lead the County towards implementing procurement best practices.
- Modernize, update and improve the procurement operation.

Staffing of Procurement Functions

A result of Orange County’s de-centralized procurement structure is that most of the 240 Deputy Procurement Agents (DPAs) do not work for County Procurement. Instead, they work for, and report directly to, the “parent” agency – the agency that hires them. The 2013-2014 OC Grand Jury expressed concern that the employee’s allegiance may be divided between the hiring agency and Procurement, with possible negative effect on performance (p.18) and the work demands of the parent-agency may interfere with attention to procurement efficiency. The Grand Jury recommendation to reassign all procurement-related staff to County Procurement was rejected by the Board of Supervisors with the stated intent to leave these employees under each agency’s management. This split duty has not changed.

The 2015-2016 Grand Jury completed a survey of randomly selected DPAs, from a variety of job levels and agencies, to assess such factors as education, duties and job satisfaction (Appendix C). Reflective of previous Grand Jury reports about split duty, the survey revealed that only half of DPAs work exclusively on procurement tasks and 41% of DPAs work less than half of their work time on procurement, some as little as 5%.

Through interviews with procurement staff, the Grand Jury learned that County Procurement does not control who an agency assigns to procurement duty, nor does it supervise or manage their work – their parent agency does. The CPO is charged with training staff newly assigned to procurement tasks, regardless of job title. The four day training and orientation must be completed in the first year and requires passing the DPA certification test which earns them the co-title of Deputy Procurement Agent (DPA). If working in a smaller agency it is possible that a DPA may be supervised by a person without any DPA training.

As described earlier, most procurement staff are not hired into the Purchasing/Procurement Job series even though that Job Classification Series (career path) exists (see Table 7). Only a third of DPAs have job titles in the Purchasing/Procurement Job Classification Series. Instead, their parent agency hires an employee into a vacant position of some other job series, or reassigns an existing employee of another payroll title and then assigns them procurement duties.

Table 7: Job Classification Series – Purchasing/Procurement

Job title	Duties	Top Annual Salary
Buying Tech Trainee	Recruitment and training position	\$36,492
Buying Technician	Buying assignments subject to frequent review	\$46,524
Buyer I	Recruitment/training position	\$53,144
Buyer II	Fully Qualified, can purchase at limited value	\$64,344
Procurement Contract Specialist	Lead role to assigned agency – large contracts and purchases	\$72,675
Supervising Contract Specialist	Supervises contract specialists	\$79,632
Admin Manager I	Manages small program or unit	\$105,456
Admin Manager II – Assistant Procurement Officer	Manages programs/units, makes recommendations	\$131,124
Admin Manager III – County Purchasing Agent (CPA)	Manage major function, advises exec team, directs subordinates	\$161,964

Source: Orange County Human Resources Job Descriptions, on line April 2016

It is unfortunate for the procurement employee who is hired into a different job series because it limits their career advancement opportunities. Some also may work in a small procurement unit where advanced procurement positions do not exist so they may not qualify for transfer into a better DPA position outside their job series.

Another impact of the decentralized system is the lack of consistent or comparable qualifications for DPAs. For instance, in the Grand Jury survey of a random sample of County-wide DPAs (Appendix C) the education level of the incumbents varies dramatically:

- No college 30%
- Associates Degree 19%

- Bachelor Degree 30%
- Advanced degree 21%

The Grand Jury survey also revealed that among the 240 DPAs, there are at least 40 distinct primary job titles, spread across 26 agencies - from Warehouse Worker, to Executive Manager (Table 8).

Table 8: Number of DPAs by Primary Job Title

Accounting Assistant II	1	Project Manager II	1
Accounting Specialist	1	Public Works Maint. Supervisor	2
Accounting Auditor	2	Secretary II	2
Accounting Office Supervisor II	1	Senior Architect/Engineering	1
Administrative Manager I	60	Senior Accounting Assistant	2
Administrative Manager II	32	Senior Contract Administrator	1
Administrative Manager III	4	Senior Accountant	2
Board Services Specialist	1	Senior Legal Secretary	1
Buyer I*	15	Senior Storekeeper	1
Buyer II*	21	Senior Buyer *	6
Buying Technician *	4	Staff Assistant	3
County Purchasing Agent*	1	Staff Specialist	16
Deputy Director	1	Storekeeper	1
Deputy Procurement Agent*	1	Storekeeper II	2
Executive Management	1	Supervising Buyer *	1
Executive Secretary	1	Supervising Legal Secretary	1
Information Technician	1	Supervising PCS *	8
Office Specialist	4	Warehouse Worker III	4
Office Supervisor	1		
Office Technician	1	* A job title that is within the Procurement series	
Procurement Contract Specialist*	29	(Source: County Procurement Office DPA list –	
Procurement Manager	1	11/19/2015 – 12/17/2015)	
Project Manager I	1		

Only about 84 DPAs (35%) work full time on procurement tasks. About 7% are not assigned to procurement tasks at all. The remaining 58% work some combination of procurement and other assignments.

What this list shows is that instead of nine procurement-related job titles as in Table 7, there are more than 40 job titles (Table 8). There are no common qualifications among the 40 job titles. It also demonstrates that procurement employees are not hired into the Purchasing/Procurement Job Classification Series.

When an agency has a procurement vacancy they assign, or hire, an employee to fill the vacancy and there is no requirement to consult with the CPO. The Grand Jury asked Procurement management about the lack of standardized qualification requirements for County-wide DPAs and was advised by at least one interviewee that common qualifications would be nice to have, but it is a Human Resources' issue, not Procurement's.

Some certified DPAs who leave procurement assignments maintain their DPA certification, perhaps to enhance their options for transfer or promotion. This does cause confusion about how many County employees are involved in procurement functions.

Training

County Procurement managers provided the Grand Jury with written and verbal information about training requirements and offerings. New employees hired into, or assigned to, a procurement assignment are required to complete Deputy Procurement Agent (DPA) training during their first year in that job. The DPA training curriculum is set by the County Procurement Office and offered three times a year at the Procurement Office. After three days of procurement training and a one-day review of the *Contract Policy Manual*, the employee must pass the DPA certification test (80% score to pass).

To maintain DPA certification, the Grand Jury received veteran DPAs must complete 10 training hours per calendar year and re-take the DPA exam every two years. These training hours can be selected from monthly, one hour review sessions held by the CPO. Training hours not completed are carried forward to be completed in the following year.

Compliance with DPA training and certification requirements is an issue. The CPO’s *Procurement Quarterly Reports 2015*, indicate that as many as 76% of DPAs are out of compliance with certification or training requirements at some point during the year. This means that many employees are performing procurement tasks when not fully trained and/or not currently certified (Table 9). That is a practice that raises concerns and needs correction.

Table 9: DPA Certification Compliance - 2015

Quarter	% in Compliance
First	96
Second	24
Third	52
Fourth	89

Source: CPO Procurement Quarterly Reports, 2015

The quality of training was rated “Sufficient” by only 27% in the DPA Staff Survey (Appendix C), and only 50% of staff rated their training as “Beneficial”. Seventy-five percent (75%) of staff responded that DPA Training, “needs improvement” as the training is often redundant and not specifically job-related enough to meet their needs.

The Grand Jury notes that more than half of the monthly and special training hours (57%) are offered during the peak vacation months of June, July, August and September, which may make it difficult for staff to attend classes of interest. (CPO Training Report 2015). During those

months, either the employee is on vacation time or must cover for other employees who are out. DPA training requirements are recent (since 2014) and are still under development. Some veteran staff reported that training that is poorly structured and delivered misses an opportunity to build a cadre of effective and productive procurement staff. Many DPAs interviewed stated that the one hour training format is not an effective way to increase knowledge and build skills.

CPO management shared a training goal to improve training through a Purchasing Academy, but plans are still in development. Because the annual training requirement was only expanded from four to ten hours, 2 years ago, the CPO acknowledged that development of in-house instructors is still a goal.

Advanced Training

There is no advanced procurement training offered through the CPO. For the motivated procurement employee, additional training and professional development are available through at least four national professional organizations.

1. Association of Procurement Professionals
2. National Association of Procurement Professionals
3. Certified Procurement Professionals
4. Procurement Association of America

Each organization offers training opportunities to expand knowledge and improve performance and promotability through:

- Skills development,
- Overview of emerging issues,
- Review of legislative changes,
- Technology developments, and
- Best practices.

The County does not require professional organization membership or certification in its Minimum Requirements for hiring. Some surveyed DPAs believe, and some Procurement managers confirm, that advanced professional training and/or certifications are not credited in hiring and promotional decisions. It is not surprising, therefore, that only 17 of 240 DPAs (7%) have achieved additional professional certification (*Procurement Quarterly Reports 2015*).

Staffing Issues

In contrast to Orange County’s decentralized procurement staffing practice, in a “centralized” procurement structure all employees are selected, trained and supervised by the Procurement

Agency. Procurement employees may be out-stationed to high-use agencies for convenience, but they remain in the Procurement chain-of-command and their performance and product is reviewed and approved by the centralized Procurement Agency.

Many of OC Procurement Office senior managers cited recruitment of quality candidates as one of their operational challenges. Because the job classification/career ladder is, if used, reasonably attractive, with few minimum requirements or pre-employment testing, one must look for other impediments to attracting qualified candidates:

- There is job series and job title confusion because most County agencies do not hire into the Purchasing/Procurement Job Classification Series (Table 7) but into whatever job title is available. Therefore, a candidate interested in working in procurement may not find vacancies or recruitment in that Job Classification Series.
- Even though employees assigned to procurement functions are certified as “Deputy Procurement Agents”, there is not an actual “Deputy Procurement Agent”(DPA) job classification or title. “DPA” is a co-title that reflects the certification required to perform procurement tasks.
- Orange County’s salary scale for the Purchasing/Procurement Job Classification Series is substantially lower than like-sized California counties (Table 10). Not all positions could be compared because of chain-of-command and job title differences, but those listed are comparable by job duties.

Table 10: Salary Survey – Top-Step, County Procurement - 2016

POSITION	RIVERSIDE	SAN DIEGO	SANTA CLARA	3 County Average	ORANGE	Difference OC v AVG	% under average
DIRECTOR	\$212,583	\$218,795	\$205,454	\$212,277	\$161,964	\$ (50,313)	31.0
ASSISTANT DIRECTOR	\$152,146	\$153,795	\$138,188	\$148,043	\$131,124	\$ (16,919)	12.9
PROCUREMENT CONTRACT SPECIALIST	\$93,616	\$84,385	***	\$89,000	\$72,675	\$ (16,325)	22.5
BUYER II	\$69,291	***	\$73,168	\$71,229	\$64,344	\$ (6,885)	10.7
BUYER I	\$62,339	***	\$64,611	\$63,475	\$53,144	\$ (10,331)	19.4

Source: Referenced County Job flyers – April 2016.

Procurement Best Practice

Based on Grand Jury research, best practice models and strategies are readily accessible for consideration through professional organizations, academia, and other sources. Most of these models are based on procurement goals of cost savings, effective management, supplier relationships and accelerating the procurement cycles. Cost containment and resource optimization are recognized as the top concerns of a procurement executive (Warn p.1). An example of one list of five best practices steps include:

1. Transform The Purchasing Culture And Be Willing To Change.
2. Analyze Your Spend – know your current cost structure.
3. Be Transparent and be open to industry input and innovation.
4. Make a Firm Supplier Commitment by improving contracting terms.
5. Move Beyond the Technology and focus on the people, process and skills behind technology (Warn p.1).

Another currently cited contracting model, known as Performance Based Contracting, changes the contracting focus from Task to Outcome. According to *Principles and Practices of Public Procurement*, adopting Performance Based Contracting is viewed as one of the current best practices which allows an organization,

“ . . . to improve performance and lower costs through the use of performance-based contracts that:

1. Describe the requirements in terms of results required rather than specifying how the work is to be accomplished;
2. Set measurable performance standards;
3. Describe how the contractor’s performance will be evaluated in a quality assurance plan; and
4. Identify and use positive and negative incentives, when appropriate.”

One of the basic elements of Performance Based Contracting, is to transfer to the contractor the responsibility for devising the most innovative, efficient and effective way to perform the work (Duft). A simple performance-based example is:

- Instead of a specific task - “Empty rubbish bins every 4 hours.”,
Use a measureable standard - “No rubbish bin will ever be more than half full.”
- Instead of a specific task - “Teach sixteen Spanish I classes”,
Use a measureable standard – “Teach Spanish to students until they pass the Spanish I Final Exam. ”

Adopting this and other modern approaches could achieve improved performance by contractors, lower costs, and simplify contract management.

The Procurement Process

The Grand Jury found multiple reports depicting the County’s procurement process as cumbersome, complex, and suffering the shortcomings of de-centralization (Performance Audit). The Grand Jury’s DPA survey, interviews with vendors, and interviews with DPAs confirm this characterization. Both sides of the process - procurement staff and vendors/contractors alike - recommend the process be revised and made user-friendly. Vendors would also like to be included in discussion of CPM revisions and have their viewpoint considered.

Contracts valued at \$3 billion flow through Regional Cooperative Agreements (RCAs) or Master Agreements (MAs) as listed in Table 6. There are some issues encountered that made this investigation difficult, and warrant review and revision. For instance, the Grand Jury could not obtain an explanation as to why some (RCA) pricing cannot be located on the County website. Without the price lists, research and comparison for contract evaluation is impossible. Likewise, in FY 2014-2015 there were 1,971 Master Agreements across 26 agencies (Table 6 and Appendix B) but research and tracking is nearly impossible because the CAPS + IT system automatically re-numbers MAs each time one is opened for modification or change. The CPO identified the need for improving the automated procurement tracking system, but there is no current plan or timeline for correction.

Agenda Staff Reports (ASRs) are prepared by Board or agency staff and attached to each Board Agenda item. They contain information that will assist the Board Members to understand the action under consideration and any legal, historic, regulatory, budgetary, or other information that may influence the Board Member’s vote. ASRs also include signatures/initials of reviewers indicating the item has been reviewed and approved at their level.

The Grand Jury reviewed a series of CY 2015 procurement-related Agenda Staff Reports (ASRs) and a variety of issues emerged.

- Purchasing/Contract submissions that originate from multiple agencies and lack consistency, and common format.
- The “Contact” person listed at the top of the ASR, the Grand Jury learned, often knows nothing about the ASR, or its specifics, and therefore cannot answer questions when contacted.
- Regional Cooperative and Master Agreements listed in ASRs (and their pricing schedules) are not always available online, making tracking and assessment difficult- to-impossible.
- Key tracking information is missing – such as how many, what kind, replacement schedule, service schedule - making it difficult to evaluate the cost basis of contract items.

- The Grand Jury read procurement-related ASRs that reached the Board of Supervisors with errors, possible improprieties, and some that appeared to be out-of-compliance with County Policy. These issues had not been caught in the review and approval process, and it was the Board of Supervisors that caught the error.
- The practice of awarding one year contracts (with four one-year renewals available) appears to the Grand Jury to create an unnecessary workload and expense. Some procurement staff interviewed estimate that renewal ASRs take many hours to research, prepare and submit through the review process, at an estimated cost of \$8,000 to \$20,000, depending on the contract complexity. The Grand Jury could not obtain an explanation as to how this practice developed but most individuals interviewed agreed that annual contract renewals have a manpower cost that could be avoided or reduced.
- One agency requested approval to contract with a private vendor for a dollar equivalent of one full time position to perform a very specific function. The expressed justification was that current workload exceeded staff time available. The Grand Jury analysis, however, indicates that the proposed Scope of Work was so limited that the contract would save only 400 man-hours, or 20% of a position per year.
- Another contract request sought temporary funding to outsource a specialized criminal justice function but the ASR did not reveal that another county agency had qualified staff that could do the work, or that the requesting agency could bring back experienced, retired staff as Extra Help to do the work.

While none of these issues is fatal to the organization, it is the accumulation of many small mistakes that reduces effectiveness and increases costs.

Request for Proposal (RFP) Solicitation Process

When the County needs to contract for high dollar services, supplies or Architecture & Engineering contracts, bids are solicited through a Request for Proposal (RFP). The RFP describes the project, the scope of work or quantities, response requirements, and timelines. The RFP is posted on the County's BidSync website which is used by both vendors and the County to initiate and track the RFP process.

The Grand Jury reviewed the RFP process and found issues indicating a need for overall review for possible revision. Although the CPO booklet, *Navigating the Request for Proposal (RFP) Process – 2012 (RFP Manual)* is well written and nicely laid out, it is four years old and out of date. Eighty-six percent (86%) of DPA staff surveyed acknowledged awareness of the *RFP Manual* (Appendix C) but the survey did not inquire as to its adequacy. In interviews, some DPA staff expressed areas of the *RFP Manual* that are problematic and, based on those remarks, the Grand Jury reviewed the *RFP Manual* and found that:

- BidSync— the County’s internet posting and tracking system for RFPs and contracts, is not mentioned by name, only as “the online bidding system.”
- Newspapers and mailed announcements are listed as the primary posting mechanisms, but procurement managers told the Grand Jury that the online bidding system is the primary posting mechanism,
- Interviews/presentations by bidders are only an option – not required. RFP responses, called bid proposals, may be misleading to an Evaluation Committee if the written proposal is the only basis for assessment. Some bid proposals are commercially produced and may not accurately reflect the bidder’s skills, abilities and compatibility with County operations, and
- Membership of the Evaluation Committees has been generally drawn from County employees, with little opportunity for including subject-experts from another county, or from the private sector. A recent change in County travel policy may correct this problem and permit reimbursement for travel and per diem for outside evaluators.

The issues identified in the RFP process by the Grand Jury appear to be an outgrowth of the issues previously identified – outdated policy, lack of standardization, technology problems, and inadequate training. Some procurement staff interviewed acknowledge that flaws in the application of the RFP process can result in errors, delays, questionable outcomes, and appeals, all of which take additional time and staff resources to resolve.

Vendor Complaints

The Grand Jury interviewed randomly selected vendors who raised complaints and suggestions about the RFP process such as:

- RFP filing deadlines are sometimes too short to provide an adequate response,
- Some deadlines are extended on short notice and without explanation. Some DPAs and managers agreed that this does happen on occasion and acknowledge the inconvenience to bidders,
- RFPs can be imprecise and confusing,
- RFP packets are often unnecessarily long – up to 100 pages. To meet requirements, proposals can reach 1200 pages. Some DPAs agree that when the RFP is for multiple sites the proposal can be hundreds of pages in order to meet requirements for each site,
- RFP requirements can be duplicative or contradictory. Some DPAs attribute this to the delegation of RFP sections to different employees for preparation and each does not necessarily review the entire packet before it is released,
- Bid evaluation is usually based entirely on the written Bid Proposal but should more often include interview and presentation as a regular practice. *The Contract Policy Manual* lists an oral presentation as an option in the process– not a requirement. Some

staff agree that personal interaction between the Evaluation Committee and a bidder in the presentation environment can be beneficial to the outcome,

- Where there is no interview or oral presentation, the evaluators cannot evaluate some of the vendor’s abilities, or their compatibility with County operations,
- A vendor complained to the Grand Jury that a member of the Evaluation Panel, responsible for scoring his proposal, had a conflict of interest that was not identified by the RFP coordinator. While the Evaluation Panel members are given a list of the bidders so they can identify a possible conflict, the same courtesy is not provided the bidders. Based on interviews, some California counties offer bidders the names of the evaluators just before interview, and the opportunity to voice an objection to a panel member and the identified evaluator sits out that presentation and scoring adjusted appropriately,
- Mathematical and statistical irregularities that are not caught and corrected by the RFP coordinators. For example, raters’ scoring tends to fall into a pattern – usually high or usually low – and are relatively consistent. If a rater’s scoring on one bidder falls outside their usual scoring pattern, the RFP coordinator should follow up to determine the reason to avoid a complaint of bias. Similarly, if four raters have been scoring similarly and each has similar rank orders (which presentation is #1, #2, etc.) and suddenly one rater scores substantially differently, the coordinator should investigate further and document explanation or correction,
- The Grand Jury noted that some RFP evaluation outcomes are mathematically incorrect, appear biased, favor a higher bid price, or are protested by the bidder. There have been occasions when the scoring had to be repeated, reviewed, or revised, based on scoring anomalies, and
- Some bidders complained that, on occasion, RFP coordinators do not consistently verify bidders’ qualifications, experience or technical skills, thereby permitting under-qualified bidders to process through.

Some vendors stated that, when the *Contract Policy Manual* goes under revision, they would like their viewpoints to be solicited and considered.

Contract Management

In Orange County’s decentralized model, each agency manages its own contracts. In discussions with DPA staff, it appears that actual vendor/contractor performance evaluation is inconsistent between agencies. Some agencies evaluated contract compliance based only on complaints and their resolution. Other staff seemed unsure what compliance review was done, just that they personally did not do it. The County Procurement Office does not track contract appeals or protests but a manager stated the hope that individual agencies do so. The agencies report that there is no consistent documentation of contract problems, vendor non-compliance, or

resolutions, making evaluation of Contract Management impossible and weakening evaluation of vendor/contractor past performance.

Some vendors complained that contract management in some agencies is excessive, specifically:

- Excessive documentation demands,
- County contract “fees” - a dollar amount per unit of service, demanded of the vendor by the County that appear to the vendor to be revenue generating and not related to offsetting County workload, and
- Excessive dollar penalties for “late” compliance with due dates, delivery schedules or document submission. Vendors felt the violations were usually minor and oversight easily corrected, or otherwise explainable.

Annual Contract Compliance Reviews

The *Contract Policy Manual*, requires the County Procurement Office (CPO) to annually review the procurement records and processes of each agency (CPM 1.5-101). The CPO refers to this as, “contract compliance review.”

**Table 11: Contract Compliance Review – 2015
5 Agencies with the Most Master Agreements**

Agency	Number of Master Agreements	Number of Contracts Reviewed	% of Contracts Reviewed
OC Sheriff	401	15	3.7
OC Public Works	259	15	5.8
Health Care	256	15	5.8
OC Community Resources	199	15	7.5
CEO	159	15	9.4
Totals	1274	75	5.8

Source: OC List of Master Agreements and Dollar Values FY 14/15

According to the CPO, a CPO representative visits each agency and randomly selects 15 contract files for review, regardless of how many contracts are active, and regardless of their dollar value. The Grand Jury could not find a requirement in the CPM as to a specific number of contracts to be reviewed each year per agency. Considering that some County agencies have several hundred contracts each (Table 11), reviewing only 15 contracts per agency seems inadequate for dependable evaluation (CPO KPI 4th quarter report 2015). The *Performance Audit of Purchasing 2014* made a similar observation and recommended that at least 24 contracts be reviewed per agency, and that the findings be reported out in 4-6 weeks, rather than the current practice of 4-6 months. (Performance #131404 p.8)

In 2015, however, County Procurement reported completing only 17 of 26 contract compliance reviews (65%). As of March 25, 2016 (three months later) the violation findings were yet to be released in half the reviews (see Table 12).

Table 12: Outcomes of Procurement Contract Compliance Reviews – 2015

Quarter	Number of Agencies Reviewed	Average # of Violation Findings per Agency
1st	3	8.3
2nd	3	11.3
3rd	5	16 4 review findings not finalized
4th	6	Review findings not finalized. 4 Review findings still pending from Q3

Source: OC Procurement Key Performance Indicators Quarterly Reports

Centralized vs. Hybrid Organizational Structure

There have been repeated recommendations to return Orange County to a centralized procurement structure, most recently in a strong case made by the 2013-2014 Grand Jury. Their recommendation was to re-allocate all procurement staff to County Procurement as part of a realignment process to centralize Procurement. A second recommendation was to increase Procurement’s oversight role by funneling all procurement submissions through County Procurement for consistent review and approval prior to submission to the Board of Supervisors (small dollar value purchases and contracts could be exempted). The anticipated result of centralization was better customer service, increased efficiency and cost savings.

While there has been little overt opposition to re-centralizing County procurement, neither has there been any action to effectuate it. Among the executives and managers that the Grand Jury interviewed, there are expressions of resigned acceptance of the current decentralized structure, and aversion to the effort it would take to transition to central procurement.

The Centralized Procurement Model

Historically, Orange County procurement services was a centralized function as part of the General Services Agency (GSA). In response to the 1994 County bankruptcy, GSA was closed down and procurement authority delegated to each agency. Based on interviews by the Grand Jury, few elected or appointed County leaders even remember the GSA or centralized

purchasing. That makes it unlikely that a current County employee has the expertise to implement procurement centralization.

As cited in this report, there have been repeated recommendations for centralizing Procurement. Looking again at “Best Practices,” the national professional organizations recommend centralized procurement. The National Institute of Governmental Purchasing, in a 1989 resolution (re-ratified in 1995), recommends that units of government have centralized purchasing as the standard. Business publications favor centralization, but do acknowledge that the level of centralization must be tailored to the agency’s strengths (Anklesaria, Centralize or).

Centralized Purchasing is the predominant procurement organizational model in at least four like-sized California Counties (Table 13) and those counties report that this gives a single agency a level of control and management that benefits the county. The Centralized Purchasing model may include out-stationed staff for convenience, but the primary advantages are (Centralized):

- Cost savings from volume purchasing and deliveries,
- Centralized records,
- Better inventory control,
- Standardization and consistency,
- Clear and centralized procurement policy and procedures,
- A cohesive career path and employees with similar qualifications,
- A clear chain of command, and
- Centralized final review and approval before procurement submissions go to the Board of Supervisors.

In interviews with agency heads and procurement staff, some argue against centralization out of an expectation of delay, and unresponsiveness to the needs of agencies or specialized work groups. End-users think they are best equipped to identify their specialized purchasing needs. At the same time, centralized procurement offers the economy of scale that reduces cost.

Transitioning to centralized procurement would require an investment of manpower which proponents believe are offset by savings realized (Anklesaria, Centralize vs.). What cannot be avoided, seemingly, is the reality that one side must learn the operations of the other. Either Procurement staff must learn the agency functions and needs, or the agency staff must learn about procurement functions and requirements.

The Hybrid Structure

There is a halfway measure that some counties use – informally referred to as the Hybrid Structure. In a hybrid structure, the Procurement agency has the administrative responsibility, and all procurement submissions go through Procurement for review and approval, before they

go to the CEO then the Board of Supervisors for consideration. Only the largest agencies operate their own procurement functions. Most of the senior procurement executives interviewed from comparable counties stated that the crucial element needed for success is the centralized review and approval of procurement submissions to the Board of Supervisors.

According to a high-ranking procurement executive of Santa Clara County they have been a hybrid county for years but their Board of Supervisors have grown increasingly dissatisfied with performance and outcome and is actively recruiting for a Procurement consultant to assess the current system and design and plan migrating to a centralized structure.

What Are Other Counties Doing?

In order to compare Orange County’s procurement structure, standards and functions, the Grand Jury conducted a data review and telephone interviews with high ranking procurement executives of California’s four like-sized counties (Los Angeles County was not included because its population is too large to be considered comparable.)

Table 13: Procurement Agency Survey – 4 Counties Compared to Orange County

Item	Riverside	San Diego	Santa Clara	San Bernardino	Orange
Procurement Annual Budget	\$800 million	\$1 billion	\$3 billion	\$5.26 billion	\$3 billion
County Population	2.3 million	3.3 million	1.3 million	2.1 million	3.2 million
County Employees	20,000 w/hospital	17,000	16,000	21,775 w/ hospital	18,000
Centralized Procurement*	Hybrid	Yes	Centralization In process	Yes	No
Procurement Director Qualifications Requirements	BA – Related field Professional certification Related Admin experience	Advanced degree 20 years procurement experience	BA Bus. Admin Professional certificate	BA Bus Adm or related Professional certification 5 yrs purchasing experience 3 years mgmt. of \$15+ million budget	Experience as Admin Manager
Number Procurement Staff	26 Direct Reports 140 report to own agency	56(+)	456	24	20 Direct Reports 220 report to own agency
Is Procurement Director selected after competitive	Yes	Yes written and oral	Yes	Yes	No

exam process?					
Staff Training requirement	New hires trained by Procurement Vets: 4 days/year + 1 hour/month	N/A	New hires: 2-3 weeks Vets: as needed	New hires: 2-4 weeks Vets: not specified	New hires: 4 days Vets: 10 hours a year
Policy Manual Exists	County Policy Manual Updated annually	Yes Procedure Manuals	Yes – updated 2X year	Yes	Yes No Procedures

*Centralized Procurement includes all staff doing procurement duties who are hired and supervised by the Procurement Agency, and all procurement proposals are reviewed and approved by Procurement before submission to Board of Supervisors.

(+) Procurement staff who work with agency Buyer 1 & 2 as team.

Orange County Information Technology (OCIT) - Possibly a Model?

There is another function that struggles with a similar centralization debate –Orange County Information Services (OCIT). According to statements by several veteran IT staff, building an Information Technology (IT) system for a county the size of Orange County is expensive and difficult from the start. According to reports from some present and former Orange County IT staff, the obstacles to establishing a dependable, efficient IT system in a large county include:

- Technology that is often untested,
- Costly initial investment,
- Customizing existing software is expensive, and
- Hardware needs replacing regularly.

Orange County’s automation efforts and expenditures began in 1974 and there have been some costly and time consuming mistakes. Automating each County agency mirrors the difficulties of the larger system. The Grand Jury was told by some experienced staff that there are common problems often experienced in IT systems:

- Cost overruns,
- Late deliveries,
- Project cancellations,
- Software failure,
- Poor-quality deliverables, and
- Unfair and/or no-bid contracts.

During the past 15 years there have been six Chief Information Officers (CIOs), all hired to improve the OCIT. The 2015-16 Grand Jury investigated OCIT’s historical contracting practices and its new direction, and studied a recent major IT *Voice and Data Network Services* contract dispute, resolution, and the County’s remedies. Additionally, the Grand Jury reviewed how

County’s IT centralization, based on shared-service model, is expected to benefit OCIT's general contracting practices and eliminate some of the pitfalls.

For more than 30 years Orange County contracted with the original outside IT vendor/contractor whose company ownership and company name have changed four times. Through this time period, most staff told the Grand Jury, operations remained reasonably stable but outcomes did not meet expectations. After numerous attempts to improve OCIT performance, the Board of Supervisors approved a number of steps leading to centralized IT procurement, and to consolidation and standardization of countywide IT. Some managers interviewed told the Grand Jury that OCIT is beginning the transitioning of OCIT procurement gradually to a centralized structure and transferring IT related positions, salaries/benefits budgets to OCIT.

In June 2014, at the direction of the Board of Supervisors, the CEO formed a cross-functional and cross-agency IT Working Group to work toward standardization and consolidation of countywide IT. Through the efforts of this Working Group, OCIT centralization is in the infancy of implementing a “service-shared centralization” model, authorized by the Board of Supervisors in March 2015. According to a statement by the County Executive Office it is too early to assess its effectiveness, but if the work group and pilot phased-progressive approach is successful and based on multi-agency input, it could be a model for centralizing Countywide procurement. The anticipated benefits of consistency, economy and cohesiveness could well serve Procurement’s enormous responsibility (SAIC Contract Amendment #1 - 2015).

FINDINGS

In accordance with California Penal Code §933 and §933.05, the 2015-2016 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 “Procurement, Big Budget, Low Priority”, the 2015-2016 Orange County Grand Jury has arrived at the following 18 findings, as follows:

- F.1.** For several years the Orange County Procurement Office and the County’s procurement functions have not been prioritized to bring about necessary changes to achieve an efficient and cost effective operation despite numerous recommendations from Grand Juries and auditors.
- F.2.** Training requirements for new and experienced Deputy Procurement Agents is inadequate. Further, the inconsistent enforcement of training compliance, and confusing training and certification timelines is a high risk practice because it allows untrained and/or uncertified employees to perform procurement tasks.

- F.3.** The current de-centralized Procurement organizational structure is outdated and not consistent with other large California counties or current procurement Best Practices and deprives the County of the ability to leverage its collective buying power to reduce costs.
- F.4.** The County does not appear to have an in-house expert on centralization who could design and implement the transition to centralized procurement.
- F.5.** The automated procurement tracking system is outdated and thereby difficult to use and appears to contribute to errors and additional costs.
- F.6.** Current practices regarding multi-year contract awards that require annual renewal are costly, inefficient, and unnecessary.
- F.7.** Advanced training and professional certification are not encouraged and are not credited in hiring or promotion of employees with procurement duties.
- F.8.** The Request for Proposal (RFP) process has a number of correctable technical operational issues such as inconsistencies in solicitation packets, conflict of interest, uncorrected errors and bidder qualifications
- F.9.** In pursuit of centralizing OCIT services, a cross-agency Working Group developed a program for the pilot phase recently launched which, if successful, may be a model for centralization of Procurement.
- F.10.** There are Procurement best practices readily available for consideration that could be adopted to improve Orange County Procurement performance.
- F.11.** The number of contracts annually reviewed for compliance with the *Contract Policy Manual* is insufficient for a dependable assessment.
- F.12.** There are no current specific minimum qualifications for County Purchasing Agent or a selection/testing procedure to identify and appoint the most qualified candidate.
- F.13.** Orange County does not offer competitive compensation for the Purchasing/Procurement Job Classification Series (and related positions) and pays up to 30% below the average of three like-sized California counties.
- F.14.** There has been no action taken on many of the recommendations made by 1997-1998, 2002-2003 and 2013-2014 OC Grand Juries, the 2009 Procurement Policy Study, and the 2014 Performance Auditor and the Internal Auditor.
- F.15.** The *Contract Policy Manual – 2012* is outdated.

F.16. There are no consistent hiring standards and qualifications for employees working in Procurement assignments, and most procurement staff are hired by agencies other than County Procurement into job titles outside the Purchasing/Procurement Job Classification Series.

F.17. The County lacks approved procedure manuals for procurement functions.

F.18. Some executive and upper management selections are made without an active recruitment and a testing process to identify the most qualified candidate, but by transferring an existing manager into the position, some without related education or experience.

RECOMMENDATIONS

In accordance with California Penal Code §933 and §933.05, the 2015-2016 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 “*Procurement – Big Budget, Low Priority*”, the 2015-2016 Orange County Grand Jury makes the following 14 recommendations:

- R.1.** The CEO in cooperation with Human Resources should establish by December 31, 2016 a specific Job Classification and description for County Purchasing Agent which includes professional, minimum qualifications in education, procurement certification, job-related experience, and progressive management duties. (F12, F18)
- R.2.** The CEO, in cooperation with Human Resources, should define a process to base the next County Purchasing Agent appointment on a nationwide recruitment, job related testing, and thorough vetting by January 1, 2017. (F1, F12, F18)
- R.3.** The CEO, in cooperation with Human Resources, should reclassify and transfer all employees in procurement functions to the County Procurement Office, and all future procurement staff be recruited and hired directly into the County Procurement Office and into a job classification within the Purchasing/Procurement Job Classification Series, managed and supervised by the CPO, by March 1, 2017. (F1, F3, F13, F16)
- R.4.** Beginning November 30, 2016, the County Procurement Office should train all employees who have procurement duties immediately upon hire or assignment, and before they are permitted to work independently on procurement tasks.(F1, F2)
- R.5.** The County Purchasing Agent should enforce standard DPA training requirements and not allow any DPA to work on procurement tasks if their DPA certification has lapsed beginning December 1, 2016. (F2, F7)

- R.6.** The County Executive Officer should hire a procurement Training Consultant to assess the training needs of procurement staff and submit a plan for training of new and veteran procurement employees by January 15, 2017.(F2, F7)
- R.7.** By October 1, 2016, the CEO should direct agencies to revise the practice of recommending the awarding of multi-year contracts, one year at a time, with possible four - 1 year extensions, by directing agency staff to submit contracts of three to five years; and direct contract managers to exercise the 30 day cancellation clause when warranted by poor vendor performance.(F6)
- R.8.** That the CEO should authorize OCIT to assist the County Procurement Office in conducting an IT needs assessment, and submit a plan and timeline for improvement, updating or replacement by March 1, 2017. (F5)
- R.9.** The CEO, in cooperation with Human Resources, should hire a procurement consultant by December 1, 2016 to review prior Grand Jury, audit and study recommendations, assess the current County procurement system, and design a plan and strategy to transition procurement from a de-centralized organizational structure to a centralized or hybrid structure by July 2017. (F1, F3, F4, F9, F10, F14)
- R.10.**The County Purchasing Agent should complete annual contract compliance reviews on at least 15% of each County agencies’ active contracts, and release/publish the violation findings within 60 days of review, beginning October 1, 2016. (F11)
- R.11.**The Chief Purchasing Agent should research procurement best practices, especially Performance Based Contracting, and submit a plan to adopt appropriate practices that would contribute to improved performance by Procurement, by January 1, 2017. (F1, F3, F6)
- R.12.**The CEO, in cooperation with Human Resources, should conduct a salary survey and make recommendations for compensation modifications to make Orange County competitive in the Purchasing/Procurement Job Classification Series by February 1, 2017. (F1, F13)
- R.13.**The County Purchasing Agent should complete a report on recommended revisions to the *Contract Policy Manual* by October 15, 2016 and complete the revisions by March 1, 2017.(F1, F8, F15,)
- R.14.**The County Procurement Office should, by January 15, 2017, lead each County agency through a process to develop function-specific *Procurement Procedure Manuals*, and all Manuals be reviewed and updated annually. (F1, F2, F8, F17)

REQUIRED RESPONSES

The California Penal Code §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). 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:

90 Day Required Responses:	F1	F2	F3	F4	F5	F6	F7	F8	F9	F10	F11	F12	F13	F14	F15	F16	F17	F18
Orange County Board of Supervisors	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X

90 Day Required Responses:	R1	R2	R3	R4	R5	R6	R7	R8	R9	R10	R11	R12	R13	R14
Orange County Board of Supervisors	X	X	X	X	X	X	X	X	X	X	X	X	X	X

Responses Requested:

Requested Responses:	F1	F2	F3	F4	F5	F6	F7	F8	F9	F10	F11	F12	F13	F14	F15	F16	F17	F18
CPO		X	X		X	X	X	X	X	X		X			X	X	X	

Requested Responses:	R1	R2	R3	R4	R5	R6	R7	R8	R9	R10	R11	R12	R13	R14
CPO			X	X	X		X	X		X	X		X	X

Requested Responses:	F1	F2	F3	F4	F5	F6	F7	F8	F9	F10	F11	F12	F13	F14	F15	F16	F17	F18
CPA										X	X	X	X					

Requested Responses:	R1	R2	R3	R4	R5	R6	R7	R8	R9	R10	R11	R12	R13	R14
CPA						X					X	X		X

Requested Responses:	F1	F2	F3	F4	F5	F6	F7	F8	F9	F10	F11	F12	F13	F14	F15	F16	F17	F18
HR							X					X	X			X		

Requested Responses:	R1	R2	R3	R4	R5	R6	R7	R8	R9	R10	R11	R12	R13	R14
HR	X	X	X									X		

Procurement –Big Budget, Low Priority

Requested Responses:	F1	F2	F3	F4	F5	F6	F7	F8	F9	F10	F11	F12	F13	F14	F15	F16	F17	F18
County Executive Office									X									

Requested Responses:	R1	R2	R3	R4	R5	R6	R7	R8	R9	R10	R11	R12	R13	R14
County Executive Office		X		X		X	X	X	X					

Requested Responses:	F1	F2	F3	F4	F5	F6	F7	F8	F9	F10	F11	F12	F13	F14	F15	F16	F17	F18
CFO										X					X			

Requested Responses:	R1	R2	R3	R4	R5	R6	R7	R8	R9	R10	R11	R12	R13	R14
CFO		X	X					X		X	X		X	

Requested Responses:	F1	F2	F3	F4	F5	F6	F7	F8	F9	F10	F11	F12	F13	F14	F15	F16	F17	F18
CEO/Information Technology					X													

Requested Responses:	R1	R2	R3	R4	R5	R6	R7	R8	R9	R10	R11	R12	R13	R14
CEO/Information Technology								X						

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APPENDIX**Appendix A: Status of 2014 Performance Audit Recommendations**

(By priority, plus Board of Supervisors sub-committee recommendations)

No.	Recommendation	Target Date	Completed
1	CPA revise Policy Manual every 2 years for Board of Supervisors approval.	June 2015	On hold
2	CPA post Contract Policy changes on intranet	None stated	Complete unk date
3	CPA create comprehensive Procedures Manual and process for regular updates.	October 2014	On hold
4	CPA review/update intranet website	August 2014	August 2014
5	CPA create slides of “Best Practices” training material and post on intranet website	August 2014	Complete
6	CPA track P/P and knowledge share metrics	June 2015	February 2016 - late
7	CPA maintain database of compliance reviews and include them in CPO annual report	None given	pending
8	CPA include compliance monitoring changes in CPM revision	June 2015	On hold
9	CPA routinely monitor “buyers” list in CAPs+ and ensure compliance with <i>Delegation of Authority</i> in CPM	None given	Complete
10	CPA Enforce DPA training requirements including 6 month extension or revoke DPA status.	August 2014	Complete & on-going
11	CPA update Master DPA list and status by agency – update annually	October 2014	Complete & on-going
12	CPA set up and track Key Performance Indicator system to include Mission and objectives.	October 2014	December 2015 - late
13	CPA increase Cal-Card monthly limit from \$15,000 to \$30,000	December 2014	September 2014
14	CPA set policy that agencies use Cal-Card when possible	August 2014	October 2014
15	CPA prepare annual report to Board of Supervisors re Cal-Card usage	January 2015	February 2016 - late
16	CPA coordinate an RFP for Countywide office supply need	November 2014	September 2015 - late
17	CPA consider separate RFPs for high-volume commodities	November 2014	September 2015 - late
18	CPA direct the RCA unit to evaluate opportunities for strategic sourcing	None given	April 2015
19	CPA revise CPM to require that RCAs >\$100K require Board of Supervisors approval	June 2015	On hold Pending CPM revision
20	CPA produce annual report on RCA unit activities and distribute to all agencies	September 2014	October 2014
21	CPA establish policy to identify under-used RCAs that should not be renewed	None given	On hold – CPM revision
22	RCA unit tailor future contracts to County’s benefit	None given	December 2014

Procurement –Big Budget, Low Priority

No.	Recommendation	Target Date	Completed
23	CPA to assign skilled CPO staff to support achievement of #16-22	July 2014	December 2015 - late
24	CPA consider CPM change to increase Board of Supervisors oversight of commodities contracts	June 2015	On hold – CPM revision
25	CPA advise Fleet to use pricing discount available under MA-017-1101276	June 2014	June 2014
26	CPA take lead on coordinating all new procurement IT system – eProcurement	None given	November 2014 & on-going
27	CPA to set policy that requires the CPO be consulted prior to an procurement IT system action	None given	November 2014
28	CPA publish annual Surplus Program report	December 2015	February 2016 - late
29	CPA review auctioneer contract & recover any revenue owed	None given	September 2014
30	CPA evaluate options to surplus sales program	September 2014	October 2015 - late
Board of Supervisors 1	Review contracts <\$25K, twice a year	None given	December 2014
Board of Supervisors 2	Explore Centralized Requisition System	November 2014	June 2016 - late
Board of Supervisors 3	Look at putting more info in RFP descriptions	August 2014	Pending CAPS upgrade Oct 2016
Board of Supervisors 4	Consider purchase policy of discretionary promotional items	None given	December 2015 - late
Board of Supervisors 5	Review need to modify threshold levels	None given	On hold – CPM revision
Board of Supervisors 6	Review public agency small dollar contracts for “best practice”.	None given	Complete
Board of Supervisors 7	Improve contract language and reduce delays in contract payments	None given	January 2015 & on-going - late
Board of Supervisors 8	Create more RCAs to consolidate purchases at more value	May 2015	May 2015
Board of Supervisors 9	An individual Board of Supervisors member request for service contract must go before the full Board of Supervisors for approval.	June 2014	Complete
Board of Supervisors 10	Report status of Board of Supervisors rec’s by December 2014	December 2014	December 2014 & monthly thereafter

Source: 2014 Performance Audit report

Appendix B: Definition of Contract Types – Orange County 2016

Contract (CT)	Legal agreement between the County and registered vendors for specific goods and services. A contract encumbers County funds, is non-renewable, project specific and allows multiple payments.
Delivery Order (DO)	Document used to purchase goods/services as/if needed from an existing Master Agreement which sets terms, conditions and pricing, but does not commit the client to make a purchase.
Hybrid	A procurement document that consists of both commodities and services
Master Agreement (MA)	A renewable contract with prices, terms and conditions which enables departments to make recurring purchases of goods and services at a negotiated price.
Purchase Order (PO)	A written contractual agreement with registered vendors for specific goods and services, usually for one order.
Regional Cooperative Agreement (RCA)	Created, and managed by RCA Unit, when six or more user agencies/departments require common goods or services and total contract exceeds \$500,000. A way to negotiate lower costs.

Source: Performance Audit of Countywide Purchasing-2014, p. 39

Appendix C: Grand Jury Survey of Deputy Procurement Agents¹ – March 2016

Number	Question	Response Summary	
1	What is your education background?	No College	30%
		Associates	19%
		Bachelor	30%
		Graduate Degree	21%
2	Percent of workday spend on procurement tasks? ²	100% of workday	67.6%
		80-99% of workday	16.2%
		50-79% of workday	5.4%
		No response	10.8%
3	Is training sufficient or needs improvement?	Sufficient	27%
		Needs improvement	73%
(Comments on Training Needs)		Not enough for new hires	
		Advanced on specific topics	
		Bid Process	
		Case Studies	
4	Are professional certificates beneficial and valued by the County when making hiring or promotional decisions?	Beneficial	51%
		Neutral	27%
		No benefit	22%
5	When you work on a Request for Proposal, Are there policies to guide you?	Yes	97%
		No	3%
		Are there Procedures for you to follow?	
	Yes	68%	
	No	32%	
6	During the RFP process, do you interview the bidder?	Often	37%
		Occasionally	24%
		Never	39%
7	Are you ever pressured to get information from a specific vendor to be included in the Bid process?	Yes	14%
		No	86%
8	Is the BidSync system useful?	Yes	86%
		No	14%
9	Are standardized policy/procedures used?	Yes	83%
		No	17%
10	Is the bidding procedure good, improvement needed or bad?	Good	89%
		Needs improvement	5%
		Bad	3%
		N/A	3%
11	Have you done sole source or no-bid contracts in the past 12 months?	Yes	25%
		No	75%
12	Are there policies and procedures available to guide you through the bidding process?	Yes	84%
		No	13%
		N/A	3%
13	Is the CAPS+ system useful?	Yes	51%
		No	41%
		N/A	8%
14	How do you rate the scoring system in the bid process?	Fair	27%
		Not Fair	3%
		No opinion	70%
15	Was the winning bid the best candidate?	Yes	51%
		No	43%
		Don't Know	6%
16	Are subject-matter-experts used in the evaluating bid proposals?	Always	62%
		Sometimes	27%
		Never	3%
		Don't Know	8%
17	Are out of county subject-experts reimbursed for their travel expenses?	Yes	16%
		No	73%
		Don't Know	11%
18	What organization structure do you think would serve Orange County the best?	Centralized	13.5%
		Hybrid	24.3%
		Standardized	29.7%
		De-centralized	32.4%

Random Sample n= 37 Response rate – 94.9%

¹ Survey sent to DPAs listed by County Procurement Office as working 100% on procurement duties.

Appendix D: Acronyms

ASR	Agenda Staff Report
AVG	Average
BA	Bachelor of Arts (Degree)
BOS	Board of Supervisors
CEO	County Executive Office/Officer
CFO	Chief Financial Officer
CIO	Chief Information Officer
CPA	County Purchasing Agent
CPM	<i>Contract Policy Manual</i>
CPO	County Procurement Office
CT	Contract
CY	Calendar Year
DCP	<i>Design and Construction Procurement Policy Manual</i>
DO	Delivery Order
DPA	Deputy Procurement Agent
ERMI	Electronic Report Management Imaging
FTE	Full Time Equivalent
FY	Fiscal Year
GJ	Grand Jury
GSA	General Services Agency
IFB	Invitation for Bids
IT	Information Technology
K	Thousands, as in \$25K
KPI	Key Performance Indicator
MA	Master Agreement
MQs	Minimum Qualifications
n	Total Number as in number surveyed
NIGP	National Institute of Government Purchasing
OC	Orange County
OCIT	Orange County Information Technology
P/C	Procurement/Contracting
PO	Purchase Order
P&P	Policy and Procedure
PCS	Procurement Contract Specialist
Q1-Q4	Quarter 1 – Quarter 4
RCA	Regional Cooperative Agreement
RFP	Request for Proposal

Appendix E: Recommendations of Procurement Management Review

by National Institute of Governmental Purchasing (NIGP) (FINAL REPORT , October 8, 2009)

All recommendations are listed. Number gaps reflect that not all report sections had recommendations attached.

- 2.1 Adopt a County Ordinance, Policy Manual and County Procurement Procedures Manual which includes the role of the Chief Procurement Officer. (Short Term – Internal)
- 3.1 The County consider for future implementation a centralized share-service organization model. (Medium Term – Internal/External)
- 3.2 Continue providing and enhancing the current DPA training provided by the CEO/Procurement Office and incorporate additional training seminars offered by outside professional procurement organizations. (Short Term – External)
- 3.3 Perform a staffing study to assess the level of resources needed to provide for Corporate and County procurement functions. (Long Term – External)
- 3.4 Develop detailed job descriptions for DPA positions, including encouraging certification as Certified Public Professional Buyers and Certified Professional Purchasing Officers.
- 3.5 Review the functions of the Purchasing teams and Contracts teams and consolidate into one procurement team responsible for commodity, services, human services and fixed asset procurement.
- 3.6 Establish County wide contracts, bid and request for proposal standard document templates, approved as to form and locked.
- 3.7 Assess the sufficiency of training and compliance staff in the County Procurement Office.
- 4.1 Adopt a new purchasing ordinance based on the Model Procurement Code.
 - Provisions to increase delegation of approval of bids and contracts to the Chief Procurement Office and County Executive Officer.
 - Include provisions for a common dollar amount requiring Board of approval of Contracts and sole sources over a certain dollar amount (recommended \$1,000,000.
 - Oversight of all procurements over a certain dollar amount (recommended \$500,000) to the Chief Procurement Officer.
 - Competitive process required over \$100,000.
- 4.2 Adopt a new Purchasing Procedures Manual based on the policies set forth in the Contract Policy Manual, which incorporates the procedural sections of the Contracts Manual, the Procurement Nuts and Bolts and Procurement Best Practices. New Sections to be added include: Environmentally Preferable Purchasing and Fire Arm Disposal.
- 4.3 Adopt a procedural manual for vendors: “How to do Business with the County of Orange.”

- 4.4 Simplify the agenda process for items requiring Board approval.
- 4.5 Develop a mechanism to make changes and revisions to the purchasing manual.
- 5.1 The recommended ordinance should contain provisions for the Chief Procurement Officer to be delegated authority under a certain dollar amount to approve sole source procurements in compliance with sound procedures. There should also be provisions for semi-annual or annual reports of sole source activity to the Board.
- 6.1 Mutual agreement of Chief Procurement Officer and Auditor-Controller on:
 - Who will ensure purchasing policies are met.
 - How and what is entered into CAPS+ to ensure proper payment.
- 6.2 Explore use of modules which support the procurement functionality to include third party software.
- 7.1 Increase the Payment Terms from 30 days to 45 days to coincide with the California Prompt Payment of Claims statute.
- 7.2 Hold agencies and departments responsible for any consequences of not processing invoicing and receiving data in a timely manner.
 - Establish stringent processing timelines for agencies and departments to provide invoicing and receiving data to accounts payable.
 - Charge any penalties for late payments to departments
 - Advertise the consequences, late payment, penalties, etc.
 - Establish and collect a County internal late payment penalty against any agency or department that does not process invoicing and receiving data within established timelines.
- 8.1 Increase the usage of the Cal-Card for small, repetitive supplies and services to take advantage of the potential transaction savings.
- 8.2 Develop a Cal-Card strategy and plan for County of Orange to increase the usage of the Cal-Card.
- 8.3 Expand the use of the Cal-Card to Blanket Contracts, Electronic Catalog Ordering and Individual Contract Payments.
- 9.1 Recommend that a dollar threshold be established whereby the CEO/Procurement Office would have oversight of all procurements.
- 9.2 All contracts should be entered into the CAPS system.
- 10.1 Develop a suite of metrics for all County procurement operations.

- 11.1 Define the requirements and implement a document assembly capability. This would be an application which would keep standard clauses needed for various procurement activities and contracts. A user could create a document by selecting the applicable clauses terms and conditions needed for the particular procurement, bid or request for proposal.
- 11.2 Implement a County wide electronic document system, which would include all procurement files on contracts, bids and request for proposals.
- 11.3 Establish County wide contracts, bid and request for proposal standard document templates, approved as to form and locked.

Appendix F: Procurement Management Review; Implementation Plan & Timetable

Implementation Plan and Timetable

This report has presented a number of recommendations. The transformation process should be divided into three phases due to the complexity of the changes proposed. The recommendations build incrementally to minimize operational disruptions, and so that successful completion of one phase establishes the foundation for the next. Based on that three phase approach, recommendations in the report are presented as Short Term (0 – 6 months), Medium Term (7 – 12 months) and Long Term (over 12 months).

Phase 1	Phase 2	Phase 3
October 2009 – April 2010	October 2009 – October 2010	October 2010 -

Phase 1. Short Term: October - April 2010

- *2.1 Adopt a County Ordinance Policy Manual and County Procurement Procedures Manual, which includes the role of a Chief Procurement Officer. (Internal)
- *3.2 Continue providing and enhancing the current DPA training provided by the Procurement Office and incorporate additional training seminars offered by outside professional procurement organizations. (External)
- * 3.7 Assess the sufficiency of training and compliance staff in the County Procurement Office. (Internal)
- *4.2 Adopt a new Purchasing Procedures Manual based on the policies set forth in the Contract Policy Manual, which incorporates the procedural sections of the Contracts Manual, the Procurement Nuts and Bolts and Procurement Best Practices. New Sections to be added include: Environmentally Preferable Purchasing and Fire Arm Disposal. (Internal/External)
- *4.3 Adopt a procedures manual for vendors: “How to do Business with the County of Orange” (Internal/External)
- *6.1 Mutual agreement of Chief Procurement Officer and Audit-Controller on:
 - Who will ensure purchasing policies are met.
 - How and what is entered into CAPS+ to ensure proper payment.
 (Internal)
- *7.1 Increase the Payment Terms from 30 to 45 days to coincide with the California Prompt Payment of Claims statute. (Internal)
- *7.2 Hold agencies and departments responsible for any consequences of not processing invoicing and receiving data in a timely manner. (Internal)



Possible actions which can be taken to control untimely receiving and invoicing include:

- *Establish stringent processing timelines for agencies and departments to provide Invoicing and receiving data to accounts payable.
- *Charge any penalties for late payments to departments.
- *Advertise the consequences, late payments, penalties, etc.
- *Establish and collect an County internal late payment penalty against any agency or department that does not process invoicing and receiving within established timelines.

*9.2: All contracts should be entered into the CAPS system. Internal

Phase 2. Medium Term: October 2009 – October 2010

*3.1 Consider for future implementation a centralized share-service organization model. (Internal/External)

*3.6 Establish County wide contracts, bid and request for proposal standard document template, approved as to form and locked. (Internal)

*4.1 Adopt a new purchasing ordinance based on the Model Procurement Code. (Internal/External)

- Provisions to increase delegation of approval of bids and contracts to the Chief Procurement Officer and County Executive Officer.
- Include provisions for a common dollar amount requiring Board of approval of Contracts and sole sources over a certain dollar amount (recommended \$1,000,000).
- Oversight of all procurement over a certain dollar amount (recommended \$500,000) to the Chief Procurement Officer.
- Competitive process required for procurements over \$100,000.

*4.4 Simplify the agenda process for items requiring Board approval. (Internal)

*4.5 Develop a mechanism to make changes and revisions to the purchasing manual. (Internal)

*5.1 The recommended ordinance should contain provisions for the Chief Procurement Officer to be delegated authority under a certain dollar amount to approve sole source procurements in compliance with sound procedures. There should also be provisions for semi-annual or annual reports of sole source activity to the Board. (Internal)

*6.2 Explore the use of modules which support the procurement functionality to include third party software. (Internal/External)

*8.1 Increase the usage of the Cal-Card for small, repetitive supplies and services to take advantage of the potential transaction savings. These purchases account for 6.3% of the County's procurement, are allowed by County policy and adequate procedures are available to alleviate fraud and abuse. (Internal/External)

*8.2 Develop a Cal-Card strategy and plan for County of Orange to increase the usage of the Cal-Card. (Internal)

*8.3 Expand the use of the Cal-Card to Blanket Contracts, Electronic Catalog Ordering and Individual Contract Payments. (Internal/External)

Phase 3. Long Term: October 2010 -

*3.3: Perform a staffing study to assess the level of resources needed to provide for Corporate and County procurement functions. (Long Term - External) (External)

*3.4 Develop detailed job descriptions for DPA positions including encouraging certification as Certified Public Professional Buyers and Certified Professional Purchasing Officers. (Internal/External)

*3.5 Review functions of Purchasing team and Contracts team and consolidate into one procurement team responsible for commodity, services, human services and fixed asset procurement. (Internal)

*9.1 Recommend that a dollar threshold be established whereby the CEO Procurement Office would have oversight of all procurements. (Internal/External)

* 10.1 Develop a suite of metrics for all County procurement operations. (Internal/External)

*11.1 Define the requirements and implement a document assembly capability. This would be an application which would keep standard clauses needed for various procurement activities and contracts. A user could create a document by selecting the applicable clauses, terms and conditions needed for the particular procurement, bid or request for proposal. (Internal/External)

*11.2 Implement a County wide electronic document system, which would include all procurement files on contracts, bids and request for proposals. (Internal/External)

*11.3 Establish County wide contracts, bid and request for proposal standard document templates, approved as to form and locked. (Internal)



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