



County of Orange

County Executive Office

March 24, 2020

Honorable Kirk Nakamura
Presiding Judge of the Superior Court of California
700 Civic Center Drive West
Santa Ana, CA 92701

Subject: Follow-Up Responses to 2018-19 Grand Jury Reports

Dear Judge Nakamura:

Please find attached the approved follow-up responses from the County of Orange Board of Supervisors for the 2018-19 Grand Jury Reports.

If you have any questions, please contact Lala Oca Ragen of the County Executive Office at 714-834-7219.

Sincerely,

Frank Kim
County Executive Officer

Enclosure

cc: FY 2018-19 Orange County Grand Jury Foreman
Lala Oca Ragen, Assistant Deputy Chief Operating Officer, County Executive Office

RECOMMENDATIONS AND RESPONSES:

GJ Report	Recommendation	Response	Follow up Response
Grand Jury Year: 2018-19			
Re-Opening Irvine Lake A Win-Win for Taxpayers and Outdoor Enthusiasts	R.1 If an impasse still exists between SWD and OC Parks on basic terms of water-based recreation rights the parties should use a neutral outside resource such as solution focused good faith mediation by September 30, 2019, to achieve resolution. (F1, F2, F3 & F6)	The recommendation has not yet been implemented, but will be implemented in the future. The County would be willing to engage in the use of a neutral outside resource for mediation or arbitration by September 30, 2019 contingent on SWD agreeing to participate.	The County negotiated a license with SWD and reopened Irvine Lake to public shoreline fishing on August 17, 2019. Long term discussions with SWD, IRWD, and Irvine Company are ongoing, and may shape future determinations of roles/responsibilities for infrastructure and public access in and around Irvine Lake.
Re-Opening Irvine Lake A Win-Win for Taxpayers and Outdoor Enthusiasts	R3 By September 30, 2019, SWD should provide full financial disclosure of historical operating information for water-based recreation activity, at a minimum for the period 2011-2016, in sufficient detail to allow OC Parks to evaluate any recreation rights buyout offer or other specific management proposal. Absent such information, SWD and OC Parks should negotiate and present to their respective governing bodies a management agreement to continue operating water-based recreation at Irvine Lake and share revenue, expenses and net profits. (F3)	The recommendation has not yet been implemented, but will be implemented in the future. In 2015 the County made a request for financials associated with lake recreation, and reiterated the same request in a letter to the water districts sent May 23, 2019. The County is willing to participate in negotiations with SWD. The County sent a letter to SWD on June 11 to set out the County's proposal regarding the short-term shoreline fishing, as well as present a framework for negotiation of a long-term agreement.	The license negotiated by the County with SWD to facilitate restoration of public fishing at the lake was based, in part, on financial information from SWD, as well as analysis of near-term costs to the County associated with one-time improvements (e.g. repair of parking and office facilities, brush clearance, etc.), operational and staffing costs, and fish stocking. Revenue projections based on parking and bait/tackle sales were projected to be (and have proven to be) far less than operating and licensing costs.
Re-Opening Irvine Lake A Win-Win for Taxpayers and Outdoor Enthusiasts	R.4 If by December 31, 2019 resolution has not been reached as to the reopening of Irvine Lake for water recreation, staff for SWD, IRWD and OC Parks should post on their respective websites and submit to their governing body for discussion in a public meeting their perspective as to the obstacles to reopening the lake and what plan they have to resolve the issue. (F4)	The recommendation has not yet been implemented, but will be implemented in the future. Staff will submit a memo to the Board of Supervisors prior to December 31, 2019 advising of the status of the negotiations and recommendations for resolution.	The County negotiated a license with SWD and reopened Irvine Lake to public shoreline fishing on August 17, 2019. Long term discussions with SWD, IRWD, and Irvine Company are ongoing, and may shape future determinations of roles/responsibilities for infrastructure and public access in and around Irvine Lake.
Re-Opening Irvine Lake A Win-Win for Taxpayers and Outdoor Enthusiasts	R.5 By December 31, 2019, SWD, IRWD and OC Parks should explore the economic feasibility of establishing and maintaining Irvine Lake at a minimum water level based on expected income and other potential cost offsets. (F5 & F6)	The recommendation has not yet been implemented, but will be implemented in the future. This will occur in conjunction with the public planning process that is scheduled to be initiated by March 31, 2020.	Long term discussions between County, SWD, and IRWD regarding lake and public access management are ongoing. Decisions regarding feasibility of maintaining water level at a minimum or consistent elevation will be made pending finalization of SWD/IRWD planning/engineering of construction projects for Lake infrastructure that are anticipated to require full draw-down of lake within the next several years.
Re-Opening Irvine Lake A Win-Win for Taxpayers and Outdoor Enthusiasts	R.6 By March 31, 2020, once recreation rights are determined, OC Parks should hold open public planning meetings to address possible uses and activities, and their location at Irvine Lake, that result in the development of a multi-year Recreational Master Plan. This planning would include examining other public/private models within Orange County and Southern California for covering future capital costs and minimizing any liability associated with boating. This also would include general cost benefit or financial feasibility analysis for the recreational uses under consideration. (F7)	The recommendation has not yet been implemented, but will be implemented in the future. OC Parks will initiate the public planning process for recreation at Irvine Lake (e.g., park plan) by March 31, 2020.	County/OC Parks is preparing to initiate public planning process for the Irvine Lake area in 2020, following receipt of critical information (e.g. confirmed list of reservoir-compliant recreational uses) from SWD/IRWD, anticipated in late March/early April.

GJ Report	Recommendation	Response	Follow up Response
The 'Silent Killer' Hypertension in Orange County's Intake and Release Center	R.5 By September 30, 2019, OCDA should establish a protocol for reviewing all medical records for medical inconsistencies when investigating custodial deaths, engaging medically trained assistance as needed, and taking appropriate corrective action to address identified inconsistencies, including referral to the appropriate state licensing board as necessary.	Defer to OCDA.	Please refer to OCDA's 6/28/19 transmittal of responses to the report that accepted and implemented the recommendation with a qualification.
The 'Silent Killer' Hypertension in Orange County's Intake and Release Center	R.6 By December 31, 2019, OCSD should reconfigure the health screening area at IRC to allow for more privacy, increased safety for the nurses conducting the screening and improved access to the inmates.	Defer to OCSD.	The design phase of the project is complete. Construction is expected to begin in Spring 2020 with completion of the project expected by December 2020.
Emergency Public Information - Should I Stay or Should I Go?	R.2 By December 31, 2019, using the authority derived from R1 (above), the Emergency Operations Center should establish specific minimum standards / expectations with regard to coordination and dissemination of Emergency Public Information that follow SEMS guidelines, by which committed cities must comply for multijurisdictional emergencies. (F1, F5, F10)	This recommendation is currently being implemented. The County through OCSD is in the process of reviewing existing emergency plans addressed in this recommendation, relating to evacuations and joint information systems, as well as and alert and warning plans that are under development. However, as stated in the response to recommendation R1 above, cities are responsible for setting their own emergency public information plans, standards and expectations.	The County has implemented the portion of the recommendation that is within its authority. The County and the Orange County Operational Area employ three supporting emergency plans which address this recommendation: The Evacuation Annex, the Joint Information System Annex and the Alert and Warning Plan. Each of these is current and adopted by the County Emergency Management Council and Operational Area Executive Board. All three documents were reviewed with regard to this recommendation and appropriate enhancements were incorporated to address standards, best practices, and lessons learned. City jurisdictions have the responsibilities to set their own standards and create their own emergency plans and annexes. Since the County does
Home At Last: Honoring Our Veterans With A Veterans Cemetery in Orange County	R.3 By December 31, 2019, in the event that both the City of Irvine and OCCD seek to pursue a veterans cemetery, the Grand Jury recommends that a joint City of Irvine and OCCD Veterans Cemetery Selection Committee be established that includes a representative of the Board of Supervisors to determine which of the respective sites will be endorsed. (F1, F5, F6, F8)	The recommendation has not yet been implemented but will be implemented in the future. If such a selection committee is established, and the Board is invited to participate, the Board will consider designating a Board representative to serve on the committee.	This recommendation will not be implemented because it is not feasible. To the County's knowledge and as of December 31, 2019, the City of Irvine and OCCD had not established a committee for selection of a veterans' cemetery site. None of the potential veterans' cemetery sites identified in the Grand Jury report are owned by the County any longer. The County transferred the Gypsum Canyon property to OCCD at no cost on April 2, 2019, for the purpose of developing a veterans' cemetery. The County's participation in a veterans' cemetery selection committee established by the City of Irvine and OCCD would only be possible to the extent requested by the parties.



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA

TODD SPITZER

June 28, 2019

The Hon. Kirk Nakamura, Presiding Judge
Orange County Superior Court
Central Justice Center
700 Civic Center Drive West
Santa Ana, CA 92701

Re: Response to 2018-19 Orange County Grand Jury Report
"The Silent Killer in Orange County's Intake and Release Center (IRC)."

Dear Judge Nakamura:

Please find enclosed a copy of the Orange County District Attorney's response to Finding F8, and Recommendation R5 of the 2018-2019 Orange County Grand Jury Report, "The Silent Killer in Orange County's Intake and Release Center (IRC)." Thank you.

Sincerely,

Todd Spitzer
District Attorney-Public Administrator

Enclosure

REPLY TO: ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

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THE SILENT KILLER IN ORANGE COUNTY'S INTAKE AND RELEASE CENTER

SUMMARY RESPONSE STATEMENT

On May 9, 2019, the Orange County Grand Jury (OCGJ) released the report, "*The Silent Killer in Orange County's Intake and Release Center (IRC)*" (hereinafter referred to as "report".) The report directed a response from the Orange County District Attorney's Office (OCDA) on one finding and one recommendation that are included below.

During the 2018-2019 Grand Jury term, the OCGJ requested information from the OCDA in connection with this report. The OCGJ also asked to interview members of the OCDA. The OCDA fully and completely cooperated with the OCGJ, and always promptly provided the OCGJ with all the requested information. Throughout the entire framework of the OCDA's interaction with the OCGJ and response herein, it should be clear that the OCDA is committed to the rule of law and the pursuit of justice in every case.

On page 12 of the OCGJ report, the OCDA is directed to provide a response to Finding 8, as well as to Recommendation 5.

FINDING AND RESPONSE

Finding F8

"Inconsistencies between the CHS reports and the reports of OCFA paramedics appear in the custodial death reports issued by the OCDA."

Response to Finding F8: Agree with a qualification

At the request of the Orange County Sheriff's Department (OCSD), and pursuant to an established protocol, the OCDA conducts a **criminal investigation and a legal review** whenever an individual dies while in the custody of the OCSD, including when the death occurs in the Orange County Jail. At the conclusion of the criminal investigation and the legal review, the OCDA issues a public report describing the investigative methodology employed, evidence examined, witnesses interviewed, facts discovered, and the legal principles applied to determine whether criminal culpability exists on the part of any OCSD personnel or any other person under the supervision of the OCSD.

The OCDA conducts an independent and thorough investigation of the facts and circumstances of each custodial death and impartially reviews all evidence and applicable legal standards. The scope and findings of the criminal investigation and legal review conducted by the OCDA are expressly limited to determining whether any criminal conduct occurred on the part of OCSD personnel or any other person under the supervision of the OCSD. As specifically stated in each report the OCDA issues in connection with custodial death investigations, The OCDA does not address "any possible issues relating to policy, training, tactics, or civil liability." The sole purpose

of the OCDA's involvement in investigating and reviewing custodial death cases is to determine if anybody committed a crime in connection with the custodial death.

The investigations of custodial deaths by the OCDA are conducted by the OCDA Special Assignment Unit (OCDASAU). Six experienced Investigators are assigned to the OCDASAU on a full-time basis. There are additional OCDA Investigators assigned to other units in the Office trained to assist when needed. On average, eight Investigators respond to a custodial death incident within an hour of being called. The Investigators assigned to respond to an incident perform a variety of investigative functions that include witness interviews, scene processing, evidence collection, and hospital investigative responsibilities as needed. The OCDASAU audio records all interviews, and the Orange County Crime Lab processes all physical evidence related to the investigation.

When the criminal investigation is concluded by the OCDASAU, the file is turned over to a veteran Deputy District Attorney for legal review. The assigned Deputy District Attorney completes the legal review and determines whether criminal charges are appropriate. Throughout the review process, the assigned prosecutor will be in consultation with the appropriate Senior Assistant District Attorney who will eventually review and approve any legal conclusions and resulting memos. The case may often be reviewed by multiple veteran prosecutors and their supervisors. The District Attorney also reviews and approves all such cases and reports. If necessary, the reviewing prosecutor may send the case back for further investigation.

If the OCDA uncovers inconsistencies between the Custodial Health Services (CHS) reports and the Orange County Fire Authority (OCFA) reports, the OCDA will include in its Custodial Death reports such inconsistencies. The OCDA will also consider such inconsistencies in determining if the facts justify the filing of criminal charges against any OCSD employee, or any individual under the supervision of the OCSD. The OCDA will also consider the conduct of CHS and its employees and contractors to determine if any such employee or contractor of CHS is criminally culpable, under the law, for the custodial death.

The only reason for the qualification in the OCDA's agreement with this finding is that such inconsistencies do not exist in **every single** custodial death report as stated in Finding F8. If the facts show such inconsistency in connection with the criminal investigation of the cause and manner of a specific custodial death, the OCDA will reflect such inconsistency in the report, however, not every custodial death report reflects such inconsistency.

RECOMMENDATIONS AND RESPONSES

Recommendation R5

"By September 30, 2019, OCDA should establish a protocol for reviewing all medical records for medical inconsistencies when investigating custodial deaths, engaging medically trained assistance as needed, and taking appropriate corrective action to address identified inconsistencies, including referral to the appropriate state licensing board as necessary.

Response to Recommendation R5: Accepted and Implemented with a qualification

In conducting the criminal investigations into custodial death incidents from the Orange County Jail, the OCDA retains the services of an independent Board Certified Forensic Pathologist to conduct the autopsy on the decedent. The OCDA retains the services of this independent pathologist to eliminate any appearance of a conflict of interest if a pathologist working for the Orange County Sheriff-Coroner is assigned to conduct the autopsy in a custodial death since the Orange County Sheriff runs the Orange County Jail. The background and qualifications of the independent pathologist retained by the OCDA are as follows:

- Over twenty one years of experience in Anatomic, Clinical, and Forensic Pathology;
- Specialties in Anatomic and Clinical Pathology (American Board of Pathology 2002), and Forensic Pathology (American Board of Pathology 2005);
- Member in the National Association of Medical Examiners (NAME), and College of American Pathologists;
- In addition to conducting autopsies for the OCDA, he currently conducts autopsies for the San Bernardino County Sheriff-Coroner, the Los Angeles County Department of the Coroner, and the Riverside County Sheriff-Coroner.

In every single custodial death case where the discrepancy listed in Finding 8 is found, the OCDA will request that the independent Board Certified Forensic Pathologist consider such inconsistency in reaching the conclusion about the cause and manner of the death. The OCDA will implement a specific protocol whereby the independent Board Certified Forensic Pathologist will be asked to review all available records from CHS and OCFA to render an expert opinion about the relevance, if any, of such a discrepancy on the cause and manner of death. The OCDA will further indicate in its report the conclusion of the independent Board Certified Forensic Pathologist regarding any such discrepancy. However, this protocol will be implemented only in cases where any such inconsistency is potentially relevant to the cause and manner of the custodial death.

In connection with the aspect of the recommendation concerning the “referral to the appropriate state licensing board as necessary,” please note that the OCDA is statutorily obligated to notify the clerk of the Superior Court and the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, the State Board of Chiropractic Examiners, and the Physician Assistant Board, whenever the OCDA files felony criminal charges against a California medical professional licensed by any of these Boards. This statutory mandate is codified in Business and Professions Code section 803.5 (a):

“The district attorney, city attorney, or other prosecuting agency shall notify the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, the State Board of Chiropractic Examiners, the Physician Assistant Board, or other appropriate allied health board, and the clerk of the court in which the charges have been filed, of any filings against a licensee of that board charging a felony immediately upon obtaining information that the

defendant is a licensee of the board. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license from one of the boards described above.” (Cal. Bus. & Prof. Code § 803.5; emphasis added.)

The OCDA will continue to carry out the statutorily mandated reporting requirements as listed above. However, potential inconsistencies between the reports of CHS and the reports of OCFA that do not rise to the level of criminal conduct and are not relevant to the criminal investigation will not trigger any such reporting requirement on the part of the OCDA.

The reason for the qualification in the OCDA’s agreement with this recommendation is because if the inconsistencies between the reports from CHS and the reports from OCFA have no legal connection or relevance to the criminal investigation being conducted by the OCDA, it will be inappropriate for the OCDA to insert itself into a matter that is not criminal in nature. This is consistent with the principle stated above, namely, that the OCDA does not address “any possible issues relating to policy, training, tactics, or civil liability,” rather, the OCDA conducts a **criminal investigation and a legal review** whenever an individual dies while in the custody of the OCSD, including when the death occurs in the Orange County Jail.