



Grand Jury Final Report

2012 - 2013 Orange County





ORANGE COUNTY GRAND JURY

700 CIVIC CENTER DRIVE WEST • SANTA ANA, CALIFORNIA 92701 • 714/834-3320
FAX 714/834-5555

June 28, 2013

Honorable Gregg L. Prickett
Supervising Judge, Felony Panel
Superior Court of California, County of Orange
700 Civic Center Drive West
Santa Ana, CA 92701

Dear Judge Prickett:

On behalf of the 2012-2013 Orange County Grand Jury, it is my pleasure to present you with the Final Report which is a compilation of the reports issued during the term. There are fourteen reports that review County and City government and operations on all levels and cite findings and recommendations. There are reports of *Commendation* to agencies for services provided with a high level of quality; and reviews of entities that we believe could provide more effective services to the residents of Orange County. All the reports are the result of extensive analysis, documented interviews and research representing hundreds of hours of work by the members of the Grand Jury.

Furthermore, this Grand Jury's contribution to the "*charging process*" was *extensive* during the 2012-2013 term. The District Attorney requested twenty-five indictments and six investigative hearings which constituted *40% of the Panel's term*. Indictments and subsequent *charges* ranged from murders, rape, and child abuse resulting in death, gang violence, excessive force by law enforcement and multiple white collar crimes including fraud and false accusations. The investigative hearings explored possible criminal actions by and within County and City agencies. One investigative hearing spanned seven months with twenty-two witnesses and thousands of pages of transcripts. We hope that in the future the County will recognize the cost effectiveness of the Grand Jury to the criminal process and provide sufficient funds to adequately support the indictment and hearing process.

The Panel members finished the term as a strong team representing the people of Orange County. The panel consisted of a *cross-section of our county* with 50% public sector and 50% from the private sector. Twenty-five percent are naturalized citizens from Asia and Canada. Twenty-five percent lived and worked abroad in countries including Mexico, Ireland, England and the European continent. The panel included business executives and management, engineers, small business owners, teachers, law enforcement, a paralegal and attorney. And for the *first time in Orange County Grand Jury history*, the panel was composed of a female majority. This *diversity and range of career and life* experiences provided a broad perspective from which to carry out its "watchdog" responsibilities for the people of Orange County.

Mission Statement 2012/2013 Grand Jury
Work collectively to influence change through autonomous and
impartial examination of public services.

The panel entered its term with a *15% reduction of its operating budget* from the prior term. Yet, the Grand Jury was able to mitigate the short-fall. For example, no air travel took place during this term.

The panel could not have made its contributions in *investigative reports* and the *criminal charging process* without the extensive assistance from many employees of the County and Superior Court. The following professionals were key to our success:

- Invaluable assistance from Grand Jury Coordinator and Administrator, Theda Kaelin, with back-up by Sandra Lopez.
- Court Reporter, Adriana Araneta, who recorded hundreds of hours of hearing proceedings.
- District Attorney criminal advisors and liaisons, Rebecca Olivieri and Brock Zimmon. Our gratitude is also extended to Sr. District Attorney, Michael Lubinski, and Assistant District Attorney, Jaime Coulter, for their counsel throughout the term.
- County Counsel's Karen Prather, who conducted extensive reviews of all the investigative reports and provided continuing counsel throughout the term. She was always available to the panel as needed for consultation.
- And Judge Prickett, Supervising Judge of the Felony Panel for the Orange County Superior Court, who graciously gave us judicial counsel and guidance as requested.

The 2012-2013 Grand Jury is proud to have served the residents of Orange County. We also extend a welcome to the incoming 2013-2014 Grand Jury and wish them best of luck in their upcoming term.

Best regards,



Raymond Garcia
Foreman
2012-2013 Orange County Grand Jury

RG:tk

Mission Statement 2012/2013 Grand Jury
Work collectively to influence change through autonomous and
impartial examination of public services.

2012-2013 Orange County Grand Jury



*Gene Kent, John Rodriguez, Nilima Gupta, Barbara Cleary
Dianne Senechal, Christine Schaefer, Virginia Zlaket, Linda Trent, Yen Bui, Sherrill Hubner, Dorothy Allen
Nindy Mahal, Foreman Ray Garcia, Roger Prasser
Jeff Love, Fred Bennett, Kathleen Conwell-Doyle, John Costello, Ian Crockett*

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Grand Jury Authority:

- The Grand Jury is an English institution brought to this country and incorporated into the Constitution.
- The Orange County Grand Jury is established by law found in the California Penal Code.
- Nineteen grand jurors serve a term of one year at the Superior Court building in Santa Ana.

Criminal Indictments:

- A criminal indictment is part of the charging process and is not a verdict of innocence or guilt.
- Indictments are returned upon a Grand Jury finding of probable cause to believe that the defendant committed a public offense.
- "Probable Cause" has a lower burden of proof than the "Beyond a Reasonable Doubt" standard used by trial juries.
- The Grand Jury may also be involved with Investigative

Foreword

2012-2013 GRAND JURY REVIEW

The 2012-2013 Grand Jury takes pride in listing its accomplishments. It has spent 40% of its time in the service of the court by rendering decisions on criminal indictments and witnessing investigative hearings brought by the District Attorney.

The Grand Jury produced fourteen reports covering diverse topics dealing with city and County governance. These reports were meticulously researched, documented, and archived. The Grand Jury went to great lengths to assure all parties who could conceivably be affected by a report were invited to meet and make corrections and clarifications as appropriate. Some responded. Some did not. The Grand Jury carefully reviewed additional documentation provided at these interviews and made necessary changes.

The ways and means of the Grand Jury reports are locked behind terms of strict confidentiality, the Grand Jurors, in fact, take an oath of secrecy and any Grand Juror that willfully discloses any evidence presented is guilty of a misdemeanor (Penal Code § 924.1). In its reports, the Grand Jury can summarize or paraphrase evidence as long as the identity of witnesses is not disclosed. (McClatchy Newspapers v. Superior Court 44 Cal. 3d 1162, 1171 (1988)). The office of the County Counsel when reviewing its reports for jurisdiction and liability issues also assures that no confidences are breached. Often the Grand Jury would like to make clear the basis behind its reporting. However, to do so would eliminate its ability to gather information from people who, without the shield of confidentiality, would never step forward. Unfortunately, critics can and do disparage the Grand Jury and its reporting knowing the source of the reports cannot be revealed short of a court order.(Penal Code § 929)

The Grand Jury writes its reports with the intention of effecting substantive change in all areas of Orange County government. Each report contains Findings which are

Civil Investigations:

- The Grand Jury serves in a civil watchdog capacity with jurisdiction to investigate County and City governments, Special Districts, Boards of Education and Community College Districts.

Grand Jury Facts:

- The first Orange County Grand Jury was empaneled in 1890 and represented the communities of Santa Ana, Westminster, Orange, Tustin, Trabuco and Arch Beach.
- Mrs. Amelia Keech was the first woman to serve as a grand juror in 1920.
- The 2012-2013 Grand Jury is proud to be the first with a majority of women as panelists.

2012-13 Statistics:

The Grand Jury issued 14 civil investigative reports on county and city governance. Its "charging process responsibilities required 40% of its term and included 25 indictment requests and 6 investigative hearings brought by the District Attorney. One investigative hearing spanned seven months and had more than twenty witnesses.

Grand Jury Reports may be found at:
<http://www.ocgrandjury.org/reports.asp>

synopses of the facts of the report. From those facts come Recommendations which are proposals to change city and County government. A review made over the past six years shows that 66% of recommendations were accepted and implemented. The Grand Jury which is often railed against for its audacity to suggest change does in fact win the day 66% of the time.

The 2012 – 2013 Grand Jury has issued the following studies:

A Call For Ethical Standards: Corruption in Orange County is a study recommending a blue ribbon committee be established to evaluate the creation of a permanent ethics oversight commission.

The Culture of Harassment: Change on the Horizon is an analysis of a seven- month investigative hearing that uncovered a systemic breakdown of policies, procedures and leadership in Orange County.

The Goal of Equal Employment Opportunity: No Victims shows that Orange County cities are doing a good job training employees in EEO procedures and that the County is working hard to improve policies and practices.

CalOPTIMA Burns While Majority of Supervisors Fiddle discusses the management turnover of a major healthcare services organization responsible for health services to one third of Orange County's poor.

To Protect And To Serve: A Look at Tools to Assist Law Enforcement In Achieving Positive Outcomes with the Mentally Ill Homeless focuses on continuing training for sworn officers and recommends national accreditation for all Orange County law enforcement agencies.

"Best Interests of the Child" Lost Child Support Costs \$1.3 Billion: private and public professionals immediately embraced this study and have joined in efforts to bring paternal parenting into the lives of children missing this most powerful influence.

Fixing the Law – Cutting Through the Tangle of Child Support and Custody is a study recommending the State empower the Department of Child Support Services to establish child custody as well as child support orders thus saving parents and the courts millions of dollars.

Detention Facilities Part I: Adult Jails examines the effect of AB109 on the County and the fact that we may run out of space for offenders in our jails.

Detention Facilities Part II: How Do We Know if We Are Taking Care of Our At-Risk Juveniles examines programs and educational opportunities available to help these young people.

Jail Rehabilitation Program: Are They Effective? Calls attention to the lack of measurement of the effectiveness of Jail programs designed to reduce recidivism.

An Investment and Compliance Review of the Orange County Treasurer is a study that examines current investment strategy, risk management, and the legal compliance of managing public and County funds.

Orange County Water Sustainability: Who Cares? examines the two major ways water is supplied to Orange County and the problems we may face in the future.

OCTA's ACCESS Service – The Way to Go!!! is a study of facilities available for the transport of handicapped citizens of the County.

Registrar of Voters Earns High Marks for 2012 Election compliments Orange County's efficient and effective electoral process.

The 2012-2013 Grand Jury appreciates the opportunity to represent 3 million people of Orange County. It leaves behind its best efforts in the sincere hopes that a high percentage of its recommendations will change Orange County for the better.

A Call For Ethical Standards: Corruption In Orange County



2012-2013

A Call For Ethical Standards: Corruption In Orange County

SUMMARY

The Blind Men and the Elephant is an ancient Indian parable that has been retold in countless variations by cultures throughout the world as a means to illustrate relativism and truth. In the story, six blind men touch different parts of an elephant and find that they are in complete disagreement with each other as to their belief in what the elephant was. The same is true when people are asked to define ethics. Substitute the word “*Ethics*” for “*Elephant*” and the six men may describe, “Morality,” “Legality,” “Belief,” “Principles,” “Values,” and “Integrity.”

Important to note is that this 2012-2013 Grand Jury Report on Ethics by its nature is not intended to be all-inclusive. Rather, the goal is two-pronged: 1) to provide an historical retrospective of ethical violations; and 2) to perhaps lay the foundation for future Grand Jury studies on the subject of ethics and corruption in Orange County government. Sadly, it is the Grand Jury’s hypothesis that untoward behavior continues and is actively festering in today’s political environment. In point of fact, this and several other studies conducted by the 2012-2013 Grand Jury address the fact that corruption has permeated all levels of the organization, and does not apply only to elected officials positioned visibly in the public eye.

Orange County has a long history of ethical violations by elected and appointed officials; as well as by employees that serve its multitude of county, city, school and special district agencies. Influence peddling played a major role in local government scandal as we transformed from an agrarian economy into the third largest populated county in California.

Trust in government is dependent upon officials that place the public interest ahead of their own. Every level of local government has faced allegations of conflict of interest, abuse of authority, patronage and lack of transparency. Equally damaging is the appearance of impropriety.

It is the Grand Jury’s hope that Orange County will commit to a positive ethics environment and program that includes elements of training, advice and enforcement as a model for other local governments to follow. The primary goal of an effective ethics program is to increase public trust in government. The secondary goal is to prevent unethical conduct.

REASON FOR STUDY

The purpose of this study is to chronicle the history of corruption in Orange County, research viable methods to reduce unethical behavior by public officials and recommend change.

A Call For Ethical Standards: Corruption In Orange County

METHOD OF INVESTIGATION

The 2012-2013 Orange County Grand Jury's study of local government ethics included the following tasks:

- Examined press articles, documents and books that record or suggest unethical decision making by government officials in Orange County;
- Reviewed press articles, documents and books about the importance of ethics in government and its relationship to the public trust;
- Read academic research papers, books and other publications about ethics and how it relates to decision-making by public officials;
- Interviewed people that work in the field of government ethics;
- Interviewed county employees;
- Consulted academia that provided insight on historical incidents of unethical decision-making by Orange County public officials who can suggest potential solutions to improve the public trust;
- Examined best practices by other California counties with respect to ethics training, monitoring and/or oversight of public officials;
- Listened to testimony by Orange County officials and employees.

BACKGROUND AND FACTS

Why The Grand Jury Conducted This Study:

The Grand Jury chose to study government ethics because of the history of impropriety by local officials. Orange County has gained a reputation (among some) for impropriety rivaling that of New York's Tammany Hall or Chicago under Mayor Richard J. Daley.^{1,2} "From 1974-77, an eye-popping 43 Orange County political figures were indicted, among them, two congressmen, three supervisors and the county assessor."³ Sadly, the conduct continues today at all levels of Orange County government.

What is ethics *exactly*? Webster's defines it as, "the study of standards of conduct and moral judgment" and "the system of morals of a particular person, religion, group, etc."⁴ Based upon our experience as Orange County Grand Jurors, we believe that there exists a direct correlation between ethical conduct and good governance.

¹ Los Angeles Times article (1992)

² Interview of a high-ranking county official (2013)

³ Three Los Angeles Times articles

⁴ Webster's New World Dictionary, Simon & Schuster MacMillian, (1998) p.149

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The Grand Jury is empowered by law to serve as a sentinel to the community by investigating the conduct of public officials and the actions of their agencies. Yet there are claims that the Grand Jury has limited legitimacy because public officials regularly disregard its reports. Findings and Recommendations found in reports are often ignored or rejected because of political agendas or desire by officials to avoid the spotlight.

The Grand Jury interviewed a professor at a local university who gave a historical perspective on corruption in Orange County: the impact of development dollars on politicians in the post-World War II building boom; the evolution of the political elite; the demise of small, local newspapers in the county that served as a “check and balance” to abuse of power. Moreover, the “lack of effective oversight” allows problems to fester in government at every level.

Orange County is the sixth largest populated county in the United States yet it lives in the shadow of Los Angeles County. The lack of radio and television networks covering metropolitan Orange County allows incidents of corruption to simmer below the surface of public awareness. If the county was located 200 miles from Los Angeles it could potentially have its own television and radio news stations – as do San Diego and Santa Barbara counties.

Perhaps... a local Orange County television station would have covered the debate among Tustin city council members during their meeting of September 4, 2011, in response to a report issued by the 2011-12 Orange County Grand Jury titled, “The Use of Government Influence on a Private Educational Institution.” A spirited discussion ensued about the wisdom and ethics of one of their council members that used political capital to intimidate an academic at a local university. Ultimately, the council member at issue was allowed to cast the deciding vote defeating a motion against him, giving the appearance of a conflict of interest.^{5,6}

Conceivably... a local radio station would have reported alleged conflicts of interest in other cities as well. A Yorba Linda city council member agreed to pay a \$3,000 fine to the Fair Political Practices Commission after that body found the council member in violation of conflict-of-interest laws by “voting on a proposed city redevelopment project that could have affected the value of the council member’s home.”⁷

Maybe... a talk show host would have discussed at length an Orange County Public Works sex scandal and the manner in which county leaders handled the investigation. Public debate may have centered on misfeasance by human resources personnel or the practice of protectionism, scapegoating and abuse of power at the highest levels of county government.

⁵ Orange County Register article

⁶ Streaming video of the Tustin City Council Meeting held September 4, 2012

⁷ FPPC Settlement Exhibit

A Call For Ethical Standards: Corruption In Orange County

The District Attorney's Office got it right when it wrote in an Agenda Staff Report to the Board of Supervisors on September 25, 2012:

*"The citizens of Orange County have the right to expect their public officials will carry out their duties in a lawful, ethical, and professional manner."*⁸

Government Ethics vs. Personal Morality

The Grand Jury recognizes that misconduct is found in all manner of human enterprise - not just in government. Corruption, scandal and unethical behavior are found in businesses, financial brokerage houses, college athletics, religious institutions and even the Olympics. Therefore, standards of ethical conduct are well established in legal, medical, judicial, accounting, education, journalism and many other professions. Adams and Balfour wrote in their book, *Unmasking Administrative Evil*:

*"In the public sphere, ...ethics are meant to safeguard the integrity of the organization by helping individuals conform to professional norms, avoid mistakes and misdeeds that violate the public trust (corruption, nepotism, etc.) and assure that public officials in a constitutional republic are accountable through their elected representatives to the people."*⁹

When examining ethics in government, it is important to make a distinction between personal and public conduct. Personal ethics is to make people morally better and to improve relationships. Government ethics is not interested in the notion of "being good", rather it is concerned with decision-making conflicts between public and private obligations. Public officials and people who do business with the government think more in terms of obligations and biases than in terms of interests. A developer gives a gift to an official not to create an interest, but to create a feeling of obligation. We don't balance interests – we balance obligations.¹⁰

This study does not judge the morality of the behavior of local government officials. It is the intent of this Grand Jury to review incidents where Orange County officials have failed in their ethical responsibilities to the public, and identify method(s) or program(s) that can minimize these lapses in the future.

Why is Ethics Important to Government?

The Founding Fathers recognized that the abuse of entrusted power for private gain is the normal, default situation historically and internationally. They created a system of governance that gives leaders the opportunity and framework to go against

⁸ Orange County District Attorney, Revised Agenda Staff Report (09/11/2012 #ASR 12-001244)

⁹ Adams, G. and Balfour, D. *Unmasking Administrative Evil*, 3ed, (2009) M.E. Sharpe (London) p. 167

¹⁰ Wechsler, R. *Local Government Ethics Programs: A Resource for Ethics Commission Members, Ethics Reformers, Local Officials, Attorneys, Journalists, and Students* (2012)

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historical precedent and the baseness of human nature.

“... In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is...the primary control on the government...”^{11, 12} -- James Madison

“... much of the strength and efficiency of any Government... depends on the general opinion of the goodness of the Government, as well as of the wisdom and integrity of its Governors.”¹³ -- Benjamin Franklin

“Experience has shown that even under the best forms of government those entrusted with power have...perverted it into tyranny.”¹⁴-- Thomas Jefferson

In 2010, the United States fell out of the top 20 least corrupt nations according to Transparency International’s Corruption Perceptions Index.¹⁵ It is more difficult to see corruption in the United States than it is in developing countries where officials will not act without a bribe. In America, everything happens behind the scenes – manipulation of contract specifications; sweetheart deals with developers; “pay to play” scenarios; and the hiring of family members, friends or close associates by companies doing business with government. Open bribery is rare.

Americans have always cast a wary eye on government. Indeed, America’s very existence is owed to the erosion of trust in the British monarchy. Today, the impact of technology and its ever-changing evolution plays an important role in the public’s ability to access immediate and sometimes fallacious information. Unfortunately, national opinion polls show that the healthy skepticism of yesteryear has turned into rigid cynicism as we embark upon the new millennium. A major source of dissatisfaction with government leadership today is the real or perceived lack of morals, ethics and honesty.

“Many [Orange County] middle-class voters have become distrustful of their elected officials and lack confidence in the way they handle the taxpayers’ money.”¹⁶

The Field Research Corporation conducted a poll in 2011 and found that “Californians (71%) have become increasingly convinced that the voting public is more

¹¹ Madison, J. The Federalist No. 51, “The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments, Independent Journal, (1788)

¹² The use of President Madison’s quote was inspired by a conversation with a professor at a local university

¹³ Farrand, M. ed. The Records of the Federal Convention of 1787. Rev. ed. 4 vols. New Haven and London: Yale University Press, 1937. The Founders’ Constitution, Volume 4, Article 7, Document 3

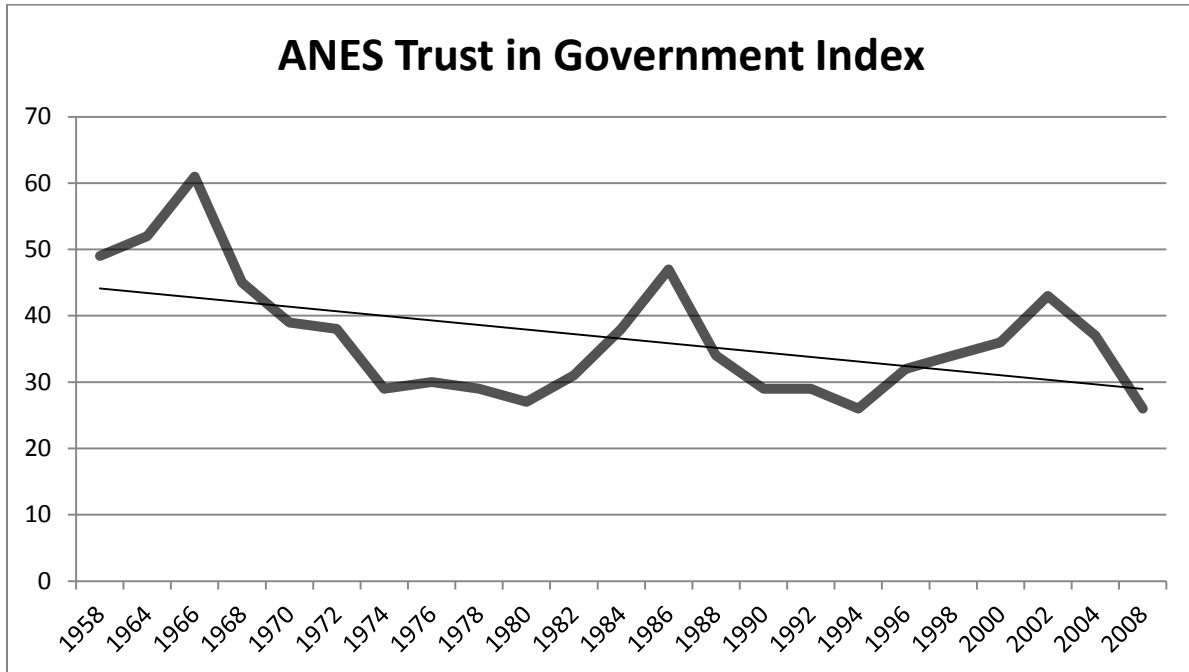
¹⁴ Goodreads.com

¹⁵ Transparency International (2010)

¹⁶ Baldassare, M. When Government Fails, The Orange County Bankruptcy (1998) University of California Press (Los Angeles) p. 222 (e-book)

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likely than their elected representatives to consider the 'broad public interest in making decisions about state government policies and laws.'" The poll also found that the "voting public rather than their elected representatives 'can be trusted more often to do what is right on important government issues.'"¹⁷ The American National Election Studies (ANES) has tracked voter trust in government since the 1950's and has found a decline:¹⁸



"Having public power, authority, and accountability in a democracy means that the public service's smooth functioning depends on trust. That trust has declined."¹⁹ President Ronald Reagan underscored the importance of trust in government in 1987:

"The power of the presidency is often thought to reside within this Oval Office, yet it doesn't rest here. It rests in you, the American people, and in your trust. Your trust is what gives a president his powers of leadership and his personal strength."²⁰

¹⁷ The Field Poll (Release #2394) (10/13/2011) San Francisco

¹⁸ American National Election Studies (8/16/2010)

¹⁹ Lewis, Carol W. and Gilman, Stuart C. p. 22

²⁰ Address to the Nation on the Iran Arms and Contra Aid Controversy, March 4, 1987

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The History of Public Corruption in Orange County

“Through the years there have been candidates and their backers in Orange County who have stepped over the line of legality, and many of them were apprehended and punished in some fashion.” – Thomas C. Rogers, Chairman of the Orange County Republican Central Committee (1969-1972)²¹

Local government includes county and city agencies, school districts, special districts and joint powers authorities. Historically, Orange County has been a hotbed of corruption, conflict of interest and abuse of authority – much of it due to the money influence of developers on officials during its growth phase. The following is a list of selected incidents *at the county level*²² that serves to underscore the abuses:

1970's

- A motion was made to expel Andrew Hinshaw from the U.S. House of Representatives after he was convicted of receiving bribes in exchange for lower tax assessments in 1976 when he was the Orange County Assessor.^{23,24}
- Dr. Louis J. Cella was a hospital developer and major donor to political candidates. He was California's largest campaign donor in 1975 when he donated more than \$500,000 to 60 candidates and causes. He was convicted of 22 counts of conspiracy, tax evasion and Medicare fraud. “His case unfolded during a tumultuous era in Orange County politics...when more than 40 public officials and their aides were indicted.”^{25,26,27,28} Three County Supervisors were beneficiaries of Cella's money:
 - Supervisor Phillip L. Anthony was indicted in 1976 and pled no contest to a misdemeanor count of laundering campaign funds.^{29,30,31}
 - Supervisor Robert W. Battin was convicted of misusing county staff while

²¹ Rogers, T. *Agents' Orange: The Unabridged Political History of Orange County 1960-2000* (2000) (San Juan Capistrano), p. 295

²² See Grand Jury Table 1 at the end of the report for a listing of ethics allegations and convictions by officials from cities and special districts

²³ The House Committee on Standards of Official Conduct, 94th Congress, 2d Session, Report Number 94-1477; Orange County Register article and Los Angeles Times article

²⁴ Rogers, T. *Agents' Orange*, p. 303

²⁵ Two Los Angeles Times articles

²⁶ U.S. Court of Appeals 9th Circuit decision 568 F.2d 1266

²⁷ People v. Cella (1981) 114 Cal. App. 3d 905 [170 Cal. Rptr. 915]

²⁸ Rogers, T. *Agents' Orange*, pp. 298-301

²⁹ Two Los Angeles Times articles

³⁰ Anthony v. Superior Court (People) (1980) 109 Cal. App. 3d 346 [167 Cal. Rptr. 246]

³¹ Rogers, T. *Agents' Orange*, p. 297

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seeking his party's nomination for lieutenant governor in 1976.^{32,33}

- Supervisor Ralph Diedrich was convicted of two counts of bribery and one count of conspiracy to commit bribery with an Anaheim Hills land developer in 1979.^{34,35}

1980's

- W. Patrick Moriarty was a fireworks magnate in Orange County. He was the subject of a three-year investigation into allegations that "political favors were obtained through bribery, kickbacks, money laundering and prostitution." He was convicted in federal court on fraud and bribery charges with eleven other people (including five city council members) in 1986. The influence peddling case affected two county supervisors. Neither was charged with a crime, but one said that his candidacy was tainted by the Moriarty scandal.^{36,37,38,39}

1990's

- Supervisor Don R. Roth was the subject of an eleven-month probe by the Orange County District Attorney's office that led to his conviction on ethics law violations in 1993. The probe, prompted by information uncovered by the Los Angeles Times centered on these ethical issues:
 - Roth killed a residential fire-prevention measure in exchange for thousands of dollars in improvements to his Anaheim Hills home.
 - Two weeks prior to voting to approve a \$5 million dollar condominium proposal, Roth discussed his vote with the landowners during a trip to Catalina Island that they hosted for the Supervisor. Evidence uncovered on credit card receipts revealed handwritten notations about the discussions.^{40,41}

³² The People v. Robert William Battin, 77 Cal.App.3d 635, 143 Cal. Rptr. 731 (1978)

³³ Rogers, T. *Agents' Orange*, p. 296

³⁴ The People v. Diedrich, 31 Cal.3d 263, Stanford Law School

³⁵ Rogers, T. *Agents' Orange*, p. 301-302

³⁶ Five Los Angeles Times articles

³⁷ *The Moriarty Affair* (3/85) (The California Journal) p. 107-109

³⁸ *The New Gold Rush: Financing California's Legislative Campaigns* (1985) (California Commission on Campaign Financing) excerpted, pp. 9, 129-132, 149-150

³⁹ Rogers, T. *Agents' Orange*, p. 304

⁴⁰ Ten Los Angeles Times articles, One Orange County Register article

⁴¹ Rogers, T. *Agents' Orange*, p. 304-306

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- *“This is a person who has gotten us millions of dollars. I don’t know how in the hell he does it, but it makes us all look good.”* – Supervisor Thomas Riley (about Treasurer Robert Citron)⁴²

Eight months after Supervisor Riley’s comment, the county declared bankruptcy after the Orange County Investment Pool reported a \$1.7 billion loss due to risky investments made by County Treasurer Robert L. Citron. He became the County’s tax collector (and prominent political figure) in 1971. Although he was “never implicated” in Dr. Louis Cella’s “criminal activities,” he was “closely associated with Cella and learned a personal style of politics and favor-trading that would mark his behavior for the rest of his public career.”⁴³ Citron pled guilty to six felonies that included filing a false and misleading financial summary to participants purchasing securities in the Orange County Treasury Investment Pool.^{44,45} Fallout from the largest municipal bankruptcy in United States history included:

- Government service at the county, city, school district and special district levels was reduced as public employees were discharged or furloughed.^{46,47}
- The Grand Jury indicted the County Budget Director and leveled civil accusations against two County Supervisors and the Auditor-Controller.^{48,49}
- Assistant Treasurer Matthew Raabe “siphoned nearly \$90 million dollars in interest earnings from local cities and school districts. The money was then deposited into the county’s general fund for use by county government.” He was convicted on five counts of securities fraud and misappropriating public funds in 1997. His conviction was overturned when a court of appeal ruled that the district attorney’s office had an overwhelming conflict of interest prosecuting the case.

The Securities and Exchange Commission entered final judgments of permanent injunction against Robert L. Citron and Matthew R. Raabe after investigating a complaint that the men fraudulently offered and sold over \$2.1 billion in municipal securities issued in 1993 and 1994 by Orange

⁴² Jorion, P., Big Bets Gone Bad – Derivatives and Bankruptcy in Orange County (1995), Academic Press, San Diego p. 7

⁴³ Jorion, P., p. 10-11

⁴⁴ People vs. Robert Lafee Citron Plea/Sentencing Agreement (4/27/95)

⁴⁵ Associated Press article

⁴⁶ Wikipedia

⁴⁷ Los Angeles Times article

⁴⁸ Baldassare, M. When Government Fails, The Orange County Bankruptcy (1998) University of California Press (Los Angeles) Table A-5 and a Los Angeles Times article

⁴⁹ Rogers, T. Agents’ Orange, p. 284-285

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County government.^{50,51}

Robert Citron and others involved in the county bankruptcy sorely betrayed the public trust by their carelessness and indifference. The lack of effective oversight contributed to an environment that allowed them to recklessly invest public funds.

2000's

- Perhaps there isn't a greater example of public corruption in Orange County history than the saga of former sheriff Mike Carona. His meteoric rise and fall began when he was appointed County Marshal at the age of 33. Ten years later he became the county's "top cop" when elected to sheriff. He became known as "America's Sheriff" in 2002 after a news conference in which he warned a child murderer: "Don't sleep. Don't eat. We're coming after you."⁵² During a prolonged fall from grace, Carona was convicted on charges of attempting to obstruct a Federal Grand Jury in 2009. Selected incidents:
 - Carona appointed 86 "political allies, friends, relatives and others" to reserve deputy positions before their background investigations were completed and days before California increased training requirements for reserve police officers. The appointments were made over the objections of Carona's staff and County Counsel concerned about "prior drug use, a child endangerment accusation and lack of training."^{53,54,55}
 - A Newport Beach inventor admitted to illegally laundering \$29,000 for Carona's campaign in 2000.^{56,57}
 - Carona fired assistant sheriff George Jaramillo for misusing a county-owned helicopter and for interfering with a Newport Beach Police Department rape investigation. (The son of another assistant sheriff committed the crime.) Jaramillo was indicted on charges of suspicion of bribery, conspiracy and conflict of interest. He pled "No Contest" in 2007 for perjury and misappropriation of public funds and was sentenced to jail.⁵⁸

⁵⁰ One New York Times article and two Los Angeles Times articles

⁵¹ SEC v. Robert L. Citron and Matthew R. Raabe, Civ. Action No. SACV 96-74 GLT (C.D. Cal.), Litigation Release No. 14792 (January 24, 1996) (complaint)

⁵² Orange County Register article and San Diego Union Tribune article

⁵³ The appointed deputies were issued guns and badges – See ^{54,55}

⁵⁴ Orange County Register article and Los Angeles Times article

⁵⁵ Bardzik v. Orange County Sheriff's Department and Michael Corona, United States Court of Appeals for the Ninth Circuit No. 09-55103 D.C. No. 8:07-cv-00141-JVS RNB Opinion (April 9, 2010)

⁵⁶ Three Los Angeles Times articles

⁵⁷ FPPC Summary of Administrative Activity (August 16, 2005)

⁵⁸ Jaramillo v. County Of Orange (2011) 200 Cal.App.4th 811 , -- Cal.Rptr.3d --; O.C. District Attorney press release (1/29/07); L.A. Times articles

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- A sheriff's secretary filed a sexual harassment suit against Carona in 2006 for ignoring her allegations that George Jaramillo showed her sexually explicit photographs.^{59,60}
- A sheriff's captain offered a written apology for soliciting campaign donations for Carona while on duty in exchange for the cessation of a criminal prosecution against her in 2006.^{61,62}
- Photographs were published in 2006 showing Carona "arm in arm" with the owner of a Las Vegas strip club later convicted of federal racketeering charges.^{63,64}
- Carona terminated, reassigned and demoted sheriff employees that supported political rival Lieutenant Bill Hunt in 2006-2007. Lawsuits were filed alleging political retaliation.⁶⁵
- A federal grand jury indicted Carona, his wife and long time mistress on charges of public corruption, conspiracy and bankruptcy fraud. He was later convicted of witness tampering.⁶⁶
- A civil engineer at an Orange County Department pled guilty to charges of receiving bribes in exchange for expediting swimming pool construction permits.^{67,68}

2010's – (During the Term of the 2012-13 Grand Jury)

- Orange County is again under scrutiny with the unfolding tale of sexual harassment, misfeasance, and incompetence involving county employees. A former city council member, employed as an executive in a large County department, is criminally charged with sexually assaulting seven women over an eight-year period.^{69,70} Political fallout from the unfolding case included the forced

⁵⁹ One Orange County Register article

⁶⁰ Redacted F.B.I. Exhibit Case 8:06-cr-00224-AG

⁶¹ Orange County Register article and Los Angeles Times article

⁶² California Attorney General Complaint

⁶³ OC Weekly article

⁶⁴ U.S. Department of Justice Press Release, Las Vegas Strip Club Owner Pleads Guilty to Conspiring to Defraud the United States (June 1, 2006)

⁶⁵ William J. Hunt v. County of Orange; Michael S. Carona, Sheriff-Coroner for the County of Orange, United States District Court of Appeals, Ninth Circuit No. 10-55163 D.C. No. 8:07-cv-00705- MMM-MLG Opinion (October 11, 2011)

⁶⁶ United States District Court for the Central District of California, Fourth Superseding Indictment, United States v. Carona, et al, October 2007 Federal Grand Jury; United States Court of Appeals for the Ninth District, United States v. Michael S. Carona, February 6, 2011, No. 09-50235 D.C. No. 8:06-cr-00224-AG-2 Opinion; and numerous press articles.

⁶⁷ Orange County District Attorney Press Release

⁶⁸ Los Angeles Times article

⁶⁹ KABC News Los Angeles – Orange County News (7/3/2012)

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resignation of the County's chief executive officer, the firing of a high ranking executive at the large County department and several early retirements and unplanned leaves of absence by key county personnel at a cost of hundreds of thousands of dollars.

- The Grand Jury heard sworn testimony about a county employee that falsified documents to the State of California about a compressed natural gas project. The employee was investigated and terminated but returned to work upon a successful judicial appeal.
- The Grand Jury received a complaint letter, read press articles, interviewed a high ranking county employee and heard sworn testimony about the practice of Executive Assistants to the Board of Supervisors being offered full-time county employment and circumventing normal competitive recruitment and hiring.^{71,72} It is a practice by some Orange County Supervisors that gives the public the appearance of cronyism and favoritism. In spite of protestations to the contrary, it is easy to imagine a Supervisor using his or her power to influence the selection of a valued aide or intern.
- California Government Code § 3500-3511 (Known as the Meyers-Milias-Brown Act) established how public employee groups can organize and engage in collective bargaining with employers over wages, benefits and working conditions. Many of the County's approximate 17,000 employees are represented by different labor groups often referred to as "unions" or "associations."⁷³

There exists a situation today, whereby managers at one County department are compensated at a lesser pay rate than managers at another department - even though their jobs are classified the same. This "equity issue" is attributed to the fact that the employees work under contracts (known as a Memorandum of Understanding) negotiated by different labor groups.

The Grand Jury was *appalled* to hear testimony about the widespread practice of inflating the performance evaluations of mediocre managers to "correct" the "equity issue." An example was given of a \$47 per hour manager who demonstrated average skill, questionable dedication and poor attendance. His/her supervisor falsely rated the employee as "Exceeds Expectations" in order to justify a significant merit increase to about \$54 per hour. This practice circumvents the purpose and spirit of collective bargaining. It does a disservice to the mediocre manager who can benefit from an *honest* appraisal of his or her

⁷⁰ Orange County Register article that included a link to the District Attorney's press conference (reviewed) outlining charges against the executive

⁷¹ Orange County Register and Voice of OC

⁷² Interview of high-ranking public official (2013)

⁷³ The scope of representation includes all matters relating to employment conditions and employer-employee relations, covering wages, hours, and other terms and conditions of employment. (§3504)

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performance. It appears to have elements of cronyism, abuse of authority and a sense of entitlement. It appears dishonest. It appears unethical.

- The Grand Jury read a series of news reports⁷⁴ about a present Board member's proposal⁷⁵ (and subsequent December 2011 adoption⁷⁶) to expand the size of the CalOptima Board of Directors and significantly alter the balance of power in favor of medical service providers over patients.⁷⁷ Only *two months later*, the hospital industry organized a \$250-per-person campaign fundraising event ostensibly billed as a "Tribute" to that supervisor.⁷⁸ A review of campaign finance documents⁷⁹ revealed that in 2012 the supervisor raised \$189,302 in cash donations, of which \$42,522 (or 24%) came from businesses or individuals associated with the healthcare industry. *Within five months* of the board reorganization, CalOptima suffered a slew of "controversial ousters and resignations" as the supervisors played a pivotal role in the oversight of the \$1.4 billion dollar managed health care program.⁸⁰

While this may be allowable under campaign finance laws, it may give the appearance of impropriety ("pay to play" or an abuse of authority) to the general public where a politician places his or her own political interest above the public good.

This is not simply a listing of individuals that have chosen to act (or appear to act) unethically. Each of the aforementioned people worked closely with others in government – a fact that has the Grand Jury concerned about a continued culture of indifference. It is evident to the Grand Jury that some *employees at all levels of county government* are unable or unwilling to learn from the mistakes of the past.

The Importance of Independence from Political Interference

Orange County has demonstrated a pell-mell approach to government ethics reform – usually as a result of scandal and the resultant negative public opinion. Several units of county government provide an oversight function – some with unclear direction or competing areas of responsibility.

1. The Internal Audit Department

Following the county bankruptcy in 1994, both the Grand Jury and a Blue Ribbon Commission made recommendations that the *internal audit* function of the Auditor-Controller's Department needed independence and should report directly to the Board of Supervisors. County Resolution 95-271 was adopted in 1995 creating the

⁷⁴ Voice of OC articles

⁷⁵ Agenda Staff Report, *OC Health Authority Ordinance Amendments* (10/2011)

⁷⁶ Regular Meeting of the Orange County Board of Supervisors (12/2011)

⁷⁷ Hospital Association of Southern California Press Release (2011)

⁷⁸ Voice of OC article

⁷⁹ FPPC California Form 460 documents for calendar 2012

⁸⁰ Voice of OC article

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Internal Audit Department “to ensure for the integrity of the County’s internal audit.”⁸¹

The Director of the Internal Audit Department is dependent upon the Board of Supervisors for an employment contract. While the Grand Jury has found nothing to the contrary, the Director’s reliance upon the Board for his/her employment contract creates a potential conflict of interest. Truly independent oversight requires a situation where the truth is told without concern of retribution or payback.

2. The Office of Independent Review

The Board of Supervisors created the Office of Independent Review in 2008 following the fatal beating of a prisoner at the Theo Lacy Jail. The Sheriff’s Department was also heavily criticized following revelations that deputies encouraged inmates to assault a prisoner wrongly suspected of child molestation.

It was reported by a local news organization on August 25, 2011, that the Board of Supervisors was frustrated with the Office of Independent Review because the Office wasn’t providing the results they expected. Supervisors cited an agency in Los Angeles County that has a similar function to the Office of Independent Review that has released numerous reports to the public.⁸² They “made it clear that the Office of Independent Review is on a short leash” after extending the Director’s contract for only six months.^{83,84}

3. The “Public Integrity Unit”

The District Attorney’s Office identified a need to add staffing due to increased complaints about public officials in Orange County. Moreover, the sexual misconduct probe caused additional strain. As a result, the District Attorney presented to the Board of Supervisors an agenda staff report requesting additional funding to staff a “Public Integrity Unit” on September 11, 2012:

“... Over the last several years, complaints and investigations of crimes involving people holding public office have steadily increased... Some specific types of crimes include, but are not limited to: illegal or inappropriate use of public funds; bribery; election and campaign violations; conflicts of interest [and] malfeasance in office...”⁸⁵

⁸¹ Internal Audit Report, “Historical Origins of OC Internal Audit Department as a Separate, Independent Function Reporting Directly to the Board of Supervisors,” Peter Hughes, Ph.D., CPA (2009)

⁸² The Los Angeles Office of Independent Review has issued 23 reports since 2008, some of which have identified significant areas of concern regarding law enforcement conduct. (www.laoir.com/Reports2.html)

⁸³ Two Voice of OC articles

⁸⁴ Regular Meeting of the O.C. Board of Supervisors, Tuesday, August 23, 2011, Item 55: APPROVED STAFF RECOMMENDATION WITH MODIFICATIONS TO RECOMMEND ACTIONS 1&2 CHANGING THE CONTRACT TERMS TO 1 YEAR FOR THE PERIOD 9/1/11 – 8/31/2012, CONTINGENT UPON AN ACCEPTABLE PERFORMANCE EVALUATION AFTER 6 MONTHS

⁸⁵ OC District Attorney Agenda Staff Report (9/11/12)

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Following concerns raised by the Board of Supervisors and political operatives in Orange County, the language of the agenda staff report was softened and modified to place the requested “Public Integrity Unit” positions into the existing “Special Prosecutions and Special Assignments Unit.”^{86,87} One Supervisor expressed concern about the title and worried that the unit would seek work in order to justify its existence.⁸⁸ The Board of Supervisors approved the report on September 25, 2012.

The District Attorney and Auditor-Controller are elected officials. As such they enjoy a higher level of independence from political interference than the appointed Directors of the other oversight departments. The Board of Supervisors’ ability to leverage the terms and duration of employment contracts has a chilling effect on freedom of action to fulfill the oversight mission and guard the public trust. The threatened (or implied) loss of employment to influence an oversight authority is tyranny. It is hard to imagine the effectiveness of the Sheriff-Coroner if she were retained “on a short leash” while executing her law enforcement duties.

While the Grand Jury applauds the hard work and effort of present-day oversight units, the Grand Jury recommends that county officials embrace comprehensive ethics reform to reduce incidents of corruption in the future.

What are the Goals of an Effective Ethics Program?

“There is nothing wrong with America that cannot be cured by what is right with America.” – President William Clinton’s 1993 Inauguration Address.⁸⁹

The Grand Jury met with a well-respected professor at a local university and discussed the issue of corruption and ethical lapses by Orange County officials. He provided the Grand Jury with great detail about Orange County in the post-World War II era – an era defined by large-scale development and the influence of those development dollars on local politicians. He spoke of special districts formed decades ago that are largely unaccountable to anyone and the fact that Orange County is lacking in effective civilian oversight.⁹⁰

When voters go to the polls to elect public officials, they are informed of the candidates’ qualifications and positions on issues of the day. Unfortunately, they are often uninformed regarding the character of those that run for local office. Buena Park voters, for example, elected a city council member later arrested for using a false social security number and driver’s license to avoid paying child support.^{91,92} In another

⁸⁶ OC District Attorney Revised Agenda Staff Report with Related Documents (9/19/2012)

⁸⁷ Voice of OC article

⁸⁸ Orange County Register article

⁸⁹ Clinton, W. (1/20/1993) Inaugural Address

⁹⁰ Interview conducted on December 5, 2012

⁹¹ Orange County Register article

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example, a member of the Board of Supervisors wondered why a person would seek public office while carrying the baggage of impropriety.⁹³

The Grand Jury cannot control or predict the competence of elected (or appointed) officials. The Grand Jury understands that political ideology will always be part of a politician's decision-making process. The Grand Jury does expect however, that local officials govern with high ethical standards -- always placing the public good ahead of their own.

The Grand Jury believes that the primary goal of an effective ethics program is the enhancement of public trust in government. After corruption, it is the appearance of impropriety that is so damaging to public confidence. When presented with a conflict of interest or obligation situation, officials often seek the advice of an attorney.

Legal advice is an important consideration for public officials, but it is often narrowly interpreted to convey whether a proposed conflict resolution is lawful - with little regard to the appearance of impropriety. When facing allegations of misconduct in office, officials often insist that they sought legal advice and what they did was "legal." It is not appropriate for public officials to use loopholes in ethics laws to their advantage at the expense of the public. What is sometimes technically legal doesn't always equate to what is ethical. Too many bureaucrats take a legalistic approach to government ethics – an approach that may be the biggest problem officials face when dealing with conflicts of interest.⁹⁴

Public officials are *best served* by seeking advice from a neutral ethics professional to see how their conduct would appear to the public.

A secondary goal of an effective program is to prevent unethical conduct and to establish a healthy ethical environment at all levels of County government. The County should serve as a shining example to all other forms of local government. It is in local government where politicians that aspire to higher office "cut their teeth" and experience their first ethical challenges, "learn to play the game," misplace their convictions and "begin to feel a special [sense of] entitlement."⁹⁵ Unfortunately, local government has more ethics scandals than effective ethics programs. Poor ethics environments start at the local level.

The Ideal Ethics Program

The Grand Jury examined ethics commissions in San Diego, Los Angeles, San Francisco and Oakland, California, as well as other oversight bodies across the

⁹² Orange County District Attorney press release

⁹³ Los Angeles Times article

⁹⁴ Wechsler, R. pp. 29-34

⁹⁵ Wechsler, R. pp. 21-22

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country.^{96,97} Grand Jury members attended a meeting of the Los Angeles City Ethics Commission in November 2012. Each of these groups had the following in common: They monitored local ethics ordinances; provided formal and informal advice; conducted ethics training; maintained a whistleblower hotline; ensured compliance through the use of administrative settlements and published annual public reports available on their websites.

Components of an Ideal Ethics Program in Orange County would be:

1. The Creation of a Healthy Ethics Environment

Government and community leaders that believe in the importance of public trust will do everything possible to help public officials (and those that conduct business with the government) deal responsibly with conflicts of interest and obligation, “before they exist, when they become relevant and after mistakes are made.”⁹⁸ In a healthy ethics environment, leaders are not afraid of an independent ethics program because they understand that the best measure is to do everything possible to prevent officials and employees from creating an appearance of impropriety.^(see 94) Department heads should foster an environment where honesty, ethical decision-making, customer service and transparency are openly and frequently discussed at staff meetings, training sessions and other informal settings.

2. Ethics Training

Prevention of unethical conduct is best accomplished through training at all levels of government. Orange County should provide ethics training to all its employees to build a foundation of understanding. The training should be a fusion of individual integrity, ethics law, compliance measures and the relationship between public perceptions and trust in government. Lastly, the County should host an annual ethics seminar for lobbyists and businesses to inform them of the County’s commitment to ethical governance and its expectations of employee conduct – particularly in the area of contracts⁹⁹ and procurement of goods and services.

3. Ethics Advice

President Lyndon Johnson said in his 1965 State of the Union Address: “A *President’s hardest task is not to do what is right, but to know what is right.*”¹⁰⁰

⁹⁶ Office of the Ombudsman, Kings County, Washington and Ethics Reform in Chicago, Illinois

⁹⁷ Source material from ethics commissions studied

⁹⁸ Wechsler, R. p. 52

⁹⁹ A clause about the County’s commitment to ethics should be included in every contract

¹⁰⁰ Johnson, L. (1/4/1965) State of the Union Address

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In addition to the Orange County's fraud hotline,¹⁰¹ employees should be offered the services of an independent ethics advisor to assist them when conflicts arise. Ethics advice differs from legal advice in several ways, one of which is that it focuses on the public's perception of a proposed action and can provide advice on potential conflicts, recusals, disclosures, transparency, gifts, procurements, etc.

Ethics advice should be available in two forms: informal and formal. Informal advice can be provided via a telephone call or meeting when an official needs quick help on an issue at hand or on a minor issue. Formal advice is rendered in writing that is published to support an official's decision and serves as a repository of opinion on ethical issues.¹⁰²

Since the appearance of impropriety is as much a problem as impropriety itself; a government ethics professional will not interpret an ethics code narrowly, as lawyers often do when giving advice. The importance of providing an ethics counselor to County employees cannot be overstated.

4. Effective Ethics Ordinances

Local ethics ordinances complement State law in that they can be crafted to reflect the needs of Orange County and be used by an oversight authority in a civil, administrative capacity. Effective ordinances include provisions on conflicts of interest, preferential treatment, recusals, gifts, confidential information, misuse of government property, patronage, nepotism, transparency, procurement, campaign financing, lobbying and post-employment of government officials. In crafting effective government ethics laws, the Cowan Commission stressed the importance of simplicity and clarity:

"We have also been guided by the conviction that the goal of any good ethics law is compliance, rather than prosecution, and that the law should be as clear – and as fully understood – as is humanly possible. In short, we have sought to banish the gray: to eliminate those areas of uncertainty that represent loopholes for those who wish to avoid compliance and are confusing traps for those who wish to comply."¹⁰³

The "Time is Now to Clean Up Politics" (TINCUP) ordinance passed by Orange County voters in 1978 (and updated in 1992) is an example of a local initiative dealing with campaign financing and disclosure. The ordinance is an example of a law that needs continuous "tweaking" to stay abreast of the

¹⁰¹ Orange County's Fraud Hotline is available for the employees and the general public alike to report questionable behavior, waste, and abuse involving County vendors, employees, and processes

¹⁰² Wechsler, R. p. 54

¹⁰³ Cowan Commission Report (11/20/1989) p. ii

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complexities of campaign fundraising.^{104,105,106} Many ethics commissions review and recommend local ordinances to keep them current with changes in the law.

5. Compliance

The Fair Political Practices Commission enforces compliance of California government ethics law. California has the eighth largest economy in the world and is the size of many nations. Consequently, the Commission is limited in its ability to enforce provisions and struggles to provide timely advice. A local ethics program can, if properly constructed, provide better service. Given the dual goals of enhancing the public trust and preventing unethical behavior, the compliance arm of an ethics program should use measures such as warning letters, administrative settlements and annual public reports to encourage appropriate ethical behavior. Compliance measures should be relatively simple and inexpensive, usually ending in settlements that themselves provide guidance to other officials.

6. Disclosure

The disclosure of relationships with individuals seeking benefits from local government accomplishes three things: First, it helps officials recognize potential conflicts and deal with them appropriately. Second, disclosure informs others about potential conflicts. Third, regular disclosure of relationships is proof of commitment to and participation in a healthy ethics program.¹⁰⁷

7. Jurisdiction

Administrators of a County ethics program should have jurisdiction over every County department, agency, commission, board and joint powers authority regardless of whether the head of such a body is elected or appointed. An ethics program, whether it takes the form of a commission, advisory group, ombudsman or other form should also have jurisdiction over the elected leadership of the County.

8. Independent Administration

Officials under the jurisdiction of an ethics program should not be involved in the selection of members serving on an ethics program or oversight authority. *It cannot be emphasized enough* that freedom to act without political interference is paramount to the success of any ethics program.

¹⁰⁴ UCI Guide to Shirley Grindle Papers MS.R.084 (2011)

¹⁰⁵ Los Angeles Times article

¹⁰⁶ Orange County Weekly article

¹⁰⁷ Wechsler, R. p. 59

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9. A Central Point of Contact

An ideal ethics program should serve as a central clearinghouse for the public (as well as officials and government employees) to complain about real or perceived violations of ethics provisions. Complaints could be via telephone hotline, correspondence or the Internet.

10. Public Reports

The ethics program should publish annual reports about complaints, formal advice letters, referrals to the District Attorney and administrative settlements. These reports serve the greater good by informing the public of sustained unethical behavior by public officials. They should be published in writing and available for download from the Internet.

If Madison, Franklin and Jefferson were with us today, they would see a beautiful, vibrant, multi-cultural Orange County much different from their colonial world. They would marvel at modern technology, construction, freeways, beaches and Disneyland. The challenges of creating and nurturing an infant nation are long gone – replaced by the challenges presented to us in the 21st Century. It would be fascinating to hear what they think about government today.

The Grand Jury is determined that a forty-year cycle of repeated ethics violations by officials in Orange County be broken. As the largest form of local government, the County should take the lead in ethics reform as a model for cities, school boards and special districts to follow.

FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2012/13 Grand Jury requests responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of corruption in Orange County, the 2012 - 2013 Orange County Grand Jury has arrived at seven principal findings as follows:

- F1 Public officials are stewards of the public trust and maintain it by placing the civic interest ahead of their own. Even the appearance of impropriety damages public faith in government. Citizens expect its officials to conduct business in a lawful and ethical manner.
- F2 The unparalleled development of Orange County from an agrarian to world-class economy in the post-World War II era led to the creation of a “power elite” of land

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developers and public officials. The influence of “development dollars” in the form of contributions to public officials resulted in a series of public corruption cases over a forty-year period. Other ethics scandals involved the abuse of power.

- F3 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.
- F4 Unethical behavior at the local government level is not something that “simply fixes itself.” The County needs an independent Ethics Program that provides training, advice and guidance to public officials and private persons seeking to do business with government.
- F5 Citizens need a clearinghouse to voice complaints about actual and perceived incidents of corruption and unethical behavior by public officials.
- F6 In California, the Cities of San Diego, Los Angeles, San Francisco and Oakland have ethics commissions that address similar ethics issues.
- F7 Orange County lacks effective ethics oversight of its public officials.

RECOMMENDATIONS

In accordance with California Penal Code Section 933 and 933.05, the 2012/13 Grand Jury requires responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of corruption in Orange County, the 2012 - 2013 Orange County Grand Jury makes the following three recommendations:

- R1 The Orange County Board of Supervisors creates a Blue Ribbon Commission to study ethics programs in California and around the nation. The Commission shall recommend an ethics reform program and oversight authority to the Board of Supervisors within 12 months. (F1, F3, F6, F7)
- R2 The Orange County Board of Supervisors shall select Blue Ribbon Commission members based upon their knowledge of government ethics, ability to conduct research and desire to make positive change to Orange County government. Their selection should represent a cross-section of Orange County’s population and be free of political influence. Commission applicants should be vetted and randomly selected from an approved pool of candidates. (F2, F7)
- R3 The Board of Supervisors shall require that ethics reform recommended by the Blue Ribbon Commission address the following in their report: (F3, F4, F5, F7)

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A. Goals

- a. The enhancement of public trust in government.
- b. The prevention of unethical conduct.

B. Legislation

The oversight authority has the power to review and recommend County ordinances related to ethics, including but not limited to: Conflicts of Interest, Preferential Treatment, Recusals, Gifts, Confidential Information, Misuse of Government Property, Patronage, Nepotism, Transparency, Procurement, Campaign Financing, Lobbying and Post-Employment of Government Officials.

C. Advice and Training

- a. The oversight authority shall provide formal and informal ethics advice to public officials and employees.
- b. The oversight authority shall plan, develop, implement and facilitate regular ethics training for public officials and employees -- at all levels of Orange County government.

D. Whistleblower Hotline

- a. The oversight authority shall create, maintain, monitor and publicize a hotline for citizens and County employees alike to report real or suspected unethical conduct.

E. Enforcement

- a. The oversight authority shall ensure compliance through the use of administrative settlements and published annual reports that are available on their website.

F. Independence and Jurisdiction

- a. The oversight body shall have the following powers:
 - i. Be free to act without political interference.
 - ii. Have jurisdiction over each County department, agency, commission, and board and joint powers authority – regardless of whether the head of such a body is elected or appointed.
 - iii. Have ethics-related jurisdiction over the elected leadership of the County.

- G. The oversight body must have the authority to enforce compliance through the use of warning letters, administrative settlements and the issuance of annual public reports.

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REQUIREMENTS AND INSTRUCTIONS:

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 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.

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

REQUIRED RESPONSES

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

The Board of Supervisors: F1, F2, F3, F4, F5, F6, F7

The Board of Supervisors: R1, R2, R3

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Report Appendix

1. Table-1
2. Case Study – City of Los Angeles Ethics Commission

Grand Jury Listing of Ethics Violations Not Used in this Report

Table-1

Year	City Official	Summary of Ethics Violation ¹
1972	Westminster Mayor and Planning Commissioner	Convicted of soliciting a bribe from a farmer leasing land at Mile Square Park.
1992	Brea Mayor	Convicted of 7 counts of Conflict of Interest. He failed to disclose millions of dollars in loans and other financial interests.
1992	Brea Council Member	Acquitted of 5 counts of misdemeanor conflict of interest. Alleged to have lobbied to give a city contract to a company that employed him as a consultant.
2000	Huntington Beach Mayor	Allegation that the Mayor voted on matters involving companies that paid for advertising in the Local News and the city's visitor guide. County and State documents reveal that the mayor owned the newspaper. Convicted.
2001	Santa Ana Council Member	Council member convicted of extortion and money-laundering in a scheme to take control of the city council.
2002	Seal Beach Council Member	Council member settled with the Fair Political Practices Commission and fined \$25,000 after making governmental decisions in which he had a financial interest, by taking action in closed-session meetings regarding a lawsuit filed against the Redevelopment Agency.
2006	Huntington Beach Mayor	Convicted of scheme to illegally convert apartments into condominiums.
2008	Placentia Public Works Director	Convicted of felony Conflict of Interest Charges -- Public Works Director used his influence to be hired as private consultant on OnTrac Project.
2008	Placentia City Manager	Indicted for Aiding and Abetting OnTrac Director – Overturned on appeal.
2012	Huntington Beach Planning Commissioner	Fair Political Practices Commission settled with the Commissioner after voting on a housing development without disclosing a donation to his/her failed city council campaign.

¹ Source material

A Call For Ethical Standards: Corruption In Orange County

Case Study – The Los Angeles City Ethics Commission

The Los Angeles City Ethics Commission was created after citizens passed Charter Amendment H in the 1989 election with 57% of the vote. The proposition was placed before voters after a series of allegations were leveled against the city's mayor. The Cowan Commission was created to research and propose local ethics legislation and the structure of an oversight body. The Cowan Commission asserted its independence by using private funds to fund its study. Critical early funding came from groups such as Bank of America, the Cedar Fund, 20th Century Fox, and Warner Brothers. Over a six-month period, commissioners studied “dozens of national, state and local laws, read scores of reports and documents and interviewed more than 200 individuals in Los Angeles and around the country.”¹

The Cowan Commission issued a report on November 20, 1989, that contained 30 recommendations including:

- The Creation of a City Ethics Commission
- Enforcement of City Ethics Law
- Ethics Education and Training
- Disclosure of Financial Information
- Honoraria, Travel Expenses and Gifts
- Conflicts of Interest

The voter mandate and Cowan Commission Report led to the adoption of local ethics law into the Los Angeles City Municipal Code that are grouped into three broad areas: Government Ethics, Campaign Financing and Lobbying.

The Los Angeles County Ethics Commission was created and consists of five commissioners serving staggered, five-year terms with a support staff of 19 employees. They meet monthly to “consider policy issues, draft legislation for city council consideration, and make determinations regarding violations of the City's ethics laws.”²

The “Duties of the Los Angeles City Ethics Commission,” as taken from their informational pamphlet are as follows: (See Citation 110)

Advice – To help people understand and comply with City laws, the Ethics Commission provides both informal and formal advice. Informal advice can be provided in person or over the telephone, regarding general guidance about laws. Formal advice is provided in writing in response to a written request, and it applies the law to a requestor's specific facts. A person who receives formal advice and follows it is immune from Commission enforcement actions.

¹ Cowan Commission Report, Ethics and Excellence in Government – The Commission to Draft an Ethics Code for Los Angeles City Government (1989)

² Los Angeles City Ethics Commission Information Pamphlet at www.ethicslacity.org

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Education and Compliance Assistance – Education and compliance assistance are essential to an effective ethics program. In partnership with the Office of the City Attorney, the Commission has developed an online course for city officials who are required to participate in ethics training every two years. The Commission provides general ethics briefings for City agencies, trainings for ethics liaisons in city departments, and trainings for candidates for elective office. The commission also produces publications and other materials to help educate candidates, public officials and the general public.

Audits – Commission staff audits the political committees of city candidates and the fundraising and expenditure statements they file. All committees controlled by city candidates who either raise or spend at least \$100,000 in an election or who receive public matching funds must be audited.

Enforcement – The commission investigates and brings enforcement actions against persons who violate the City’s ethics laws. Many cases begin as complaints to the whistleblower hotline. If a violation has occurred, administrative penalties of up to \$5,000 per violation or three times the amount of money that was unlawfully contributed, accepted, or concealed may be levied. The Commission works closely with both the District Attorney’s office and the Fair Political Practices Commission as needed.

Policy and Legislation – The Commission must regularly evaluate the effectiveness of the City’s ethics laws and make recommendations about the laws to the Mayor and City Council. The Commission staff collects data, identifies trends, and analyzes issues to help the commissioners assess existing policies. The Commission proposes legislation to the City Council and makes recommendations to help shape ethics laws and policies.

Whistleblower Hotline – The commission is required to maintain a whistleblower hotline, through which City officials, employees, and members of the public can report potential violations of the City’s ethics laws. Commission staff independently investigates all complaints, which may be submitted 24 hours a day by phone, or online.

The Grand Jury reviewed documents that showed how the Los Angeles City Ethics Commission wrote a detailed advice letter to a former official asking about post-employment consulting with the City. The advice letter reviewed applicable laws and provided analysis and a conclusion to assist the former official and others with similar questions about post-employment restrictions under their municipal code.³ Advice letters issued by the Commission cover other topics as well: contribution limits, outside employment, post-election fundraising, gifts from lobbying firms, gifts of travel, etc.⁴

The Grand Jury read two press releases by the Los Angeles City Ethics Commission where they announced the imposition of penalties for violations of the City’s ethics laws. In the first release, commissioners approved stipulations for fines in

³ Los Angeles City Ethics Commission Advice Letter

⁴ Formal advice letters published online by the LA City Ethics Commission

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the amount of \$175,000 for two violations of campaign finance laws. In the other release, stipulations were agreed to in the amount of \$185,000 for two violations of political money laundering during an election campaign.⁵

⁵ Los Angeles City Ethics Commission Press Releases

The Culture Of Harassment: Change On The Horizon



2012-2013

The Culture Of Harassment: Change On The Horizon

SUMMARY

During the last few years a number of sexual harassment complaints from Orange County employees have come to light. Two complaints garnered wide media attention with one of them resulting in criminal charges against a senior county employee. The other complaints have remained cloistered in the offices of various County agencies where the alleged harassment occurred.

While hearing the testimony of 21 witnesses, the Grand Jury identified a disturbing pattern of sexual harassment claims being overlooked, ignored, poorly investigated, and even suppressed. The Grand Jury participated in a number of investigative hearings surrounding the events concerning the sexual harassment complaint that led to the criminal charges against an elected City official who was also an executive manager for the County. The witnesses who testified were from all levels of County government – the rank and file as well as elected officials and executive management. The Grand Jury found a severe lack of understanding of what constitutes sexual harassment. Also distressing was a strong tolerance for inappropriate behavior, especially when it concerned high-ranking elected officials and executives. As the Grand Jury listened to the testimonies, it became apparent that this tolerance of inappropriate behavior was “culturally inspired.”

REASON FOR STUDY

This study focuses on the culture, conduct, and action that allowed the tolerance of sexual harassment to rise to the level of alleged criminal conduct. Culture is the essence of how a society, business, or government operates. Such entities normally publish a policy statement regarding what is, or is not, acceptable behavior for those working in each of these venues. Problems arise when leadership fails to enforce these policies, provides inadequate guidance on how to follow the policies, or the leaders display behavior that is contradictory to their published policies.

The Grand Jury would like to point out that the County of Orange is currently undergoing the re-centralization of its Human Resources Department. This report does not address or discuss all of the changes brought about by the re-centralization. The department has been renamed Human Resource Services. Because this report deals with many events which took place before the very recent re-centralization, this study will use the prior name of Human Resources Department (HRD) in this report. The Grand Jury acknowledges that some of the deficiencies that have been identified in this report are being addressed and corrected. However, it is highly probable that these and other deficiencies will continue regardless of any one change in policies and procedures, or change in reporting structure. This is because the *change will not happen with just a well written directive; rather, the change will come by creating a culture that shows by conduct and action by all a commitment to a safe and equitable working environment for all.*

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It is the goal of the Grand Jury that, by reviewing and bringing to light many of the events of the last few years, the County will recognize the need for, and embrace, strong leadership and training in areas of acceptable behavior, and the need for a robust Human Resources Service Department, **free from political influence**, to monitor and enforce County policies.

METHOD OF INVESTIGATION

The 2012-2013 Grand Jury heard testimony concerning the events before and after the filing of criminal charges for sexual harassment from 21 witnesses over a seven month period. All testimony was under oath and documented by a court reporter. Additionally, members of the Grand Jury conducted seven other interviews with County employees and elected officials. The Grand Jury reviewed 210 documents that comprised thousands of pages. Members of the Grand Jury examined the laws regarding the Equal Employment Opportunity Commission's (EEOC) definition of harassment and discrimination, and the Federal and California guidance on model policies comparing them to the County's harassment and discrimination policies. The Grand Jury examined a variety of documents issued by the County Human Resource Service Department, formally Human Resources Department (HRD), and the Memorandums of Understanding (MOUs) currently in effect between the County and Labor.

The Grand Jury heard many different opinions from the witnesses who gave testimony during the investigative hearings about the actions surrounding events that led to the filing of criminal charges. The Grand Jury did not rely on any single statement from a particular witness, or one isolated document, to establish the conclusions of this report. The conclusions in this study were supported by numerous witnesses and documents.

BACKGROUND AND FACTS

Lack of Written Policies, Procedures, and Training:

The County of Orange has a long-standing published policy regarding the laws concerning Equal Employment Opportunity (EEO) and work place discrimination. This policy was refreshed by Board Resolution on October 30, 2012 and meets the legal requirements of Federal and State laws governing EEO. It is distributed to all employees annually by the incoming Chairman of the Board of Supervisors. The policy also includes a procedure that states when a complaint is received the County will take all necessary steps to insure a prompt investigation and that appropriate remedial action is taken. Unfortunately, this was just about the extent of the written policies and procedures existing to guide any County employee assigned to investigate a complaint of harassment or discrimination.

The County of Orange decentralized its human resources agency after declaring bankruptcy in 1994. Most agencies and departments (with very few exceptions) set up

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their own separate human resource departments. The County of Orange maintained a Central HRD which was mandated by policy makers to coordinate and help ensure that the human resource policies of the County were followed. The efforts to coordinate were minimal, especially in the area of EEO. Training of HRD staff was limited to shadowing a peer, meaning a person followed another person to observe how the job was done. Formal instruction from outside firms specializing in human resource matters was most often left to the discretion of the employee, meaning there was no requirement for any manager to attend any training except the on-line biannual training as mandated by law. Except for a one page document referencing the preferred steps to be taken during an investigation, there were no written policies or procedures for how to conduct an investigation of a complaint of harassment or discrimination. The Grand Jury has been advised that the last time training was offered on how to conduct an investigation was five or six years ago and there was no requirement for attendance.

What the Grand Jury found particularly alarming was the lack of knowledge in identifying a violation of EEO laws. The Grand Jury heard testimony from personnel in Central HRD and the departments providing human resource assistance of various County agencies, as well as County executives and elected officials, and each had a different interpretation of sexual harassment as it relates to EEO. The majority of these interpretations were wrong in multiple areas. When presented with the original complaint of sexual harassment against the County employee who was criminally charged, persons from Central HRD said they thought it was from a whiner and would not have forwarded it to the EEO Access Office as prescribed by the County of Orange in their policies and procedures. Similar sentiments were expressed multiple times during other testimonies.

Another problem in each of the various agency human resource departments was the internal recruitment process for senior and mid-level managers. Employees were allowed to transfer from other areas (IT, Social Services, etc.) with no experience in human resource matters. The only requirement was meeting the job classification (i.e. Admin I, Admin II, etc.) for the posted position with no prerequisite for proficiency (or even familiarity) with the department's responsibilities and duties. This system resulted in supervisors and managers with no expertise who were overseeing not only the functions of the HR Departments, but the training of the staff (i.e., "the blind leading the blind").

The lack of written policies and procedures coupled with inadequate EEO knowledge and training resulted in the bungled internal investigation of the original complaint against the County employee who was charged at a later time with felony crimes arising out of his alleged misconduct. Upon review of the internal investigation, the Grand Jury found it lacking in the most fundamental basics of an investigation into behaviors of misconduct by employees, either in the private or public sector. This botched probe allowed this individual to continue his behavior for another six months before he was removed from the workplace. It also resulted in the termination of the senior department executive to whom the individual reported. It has been suggested in the media, and in testimony heard by the Grand Jury, that this termination was due to

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not following policies and procedures, and for not informing Central HRD and the EEO Access Office about the complaint. The Grand Jury has heard convincing testimony that many highly placed County executives and elected officials had a copy of the complaint or knew of its existence, but did nothing. Those that received a copy of the complaint, or otherwise knew of its existence and content, had a duty and responsibility to ensure that a proper and objective investigation took place as outlined in The County of Orange Equal Employment Opportunity Policy and Procedure document. This document applies to every employee and elected official and every employee receives a copy of this document every year. Testimony given to the Grand Jury also confirmed that it was well known by highly placed officials that the original internal investigation was being conducted by a direct subordinate of the accused. Multiple persons gave testimony that they were at a meeting where the original complaint letter was discussed. In regards to this complaint, the County executive who was terminated was told by his superior you can look around, but don't put too much stock in it.

The Grand Jury is aware that some will argue that the events described above were an anomaly and "best practices" are generally followed on all investigations. This is simply not the case. The Grand Jury reviewed a variety of other past investigations of complaints and found a lack of consistency and openness in the reports. During testimony, employees of the County explained to the Grand Jury that it was an unwritten HRD policy that the person writing the report would respond only to specific allegations contained in a complaint. An example given to the Grand Jury of this practice was: if a person is asked to investigate a death caused by a gunshot, they may come back and say the death was unsubstantiated because the death was caused by a knife wound. Also, if additional information or wrongdoing that was not specifically referenced in the complaint was discovered, there was no obligation to include this information in the report. Hence, many violations of County policies in areas other than sexual harassment were buried, or ignored, because these violations had not been "specifically" stated in the original complaint. Such obfuscation reflects a "letter of the law" rather than a "spirit of the law" approach. This lack of written policies and procedures was one reason for the development of a culture that supported silence rather than dealing with events as they unfolded, and taking appropriate action.

This practice of silence rather than reporting was evident to the Grand Jury when it reviewed multiple memos between the Central HRD and the Internal Audit Department (IAD) concerning a second complaint of possible sexual harassment, recruitment violations, and retaliation.

IAD is a stand-alone department reporting to the Board of Supervisors. One of IAD's duties is to operate a "fraud hotline" where employees may report their concerns, and can do so with anonymity. When IAD receives a complaint via its fraud hotline, it passes the complaint to the appropriate department for investigation. IAD will then monitor the progress of the investigation until suitable action is taken and the matter is closed.

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A second complaint letter was received by IAD and various County officials and it contained additional allegations of sexual harassment by the same individual named in the first complaint. IAD sent this complaint to Central HRD and this prompted the County to hire an outside independent law firm to investigate. The firm produced a report verifying the sexual harassment and indicating the possibility of criminal conduct. IAD was tracking the investigation and repeatedly asked Central HRD, via memos and meetings over a six month period, for all documents and information related to all allegations in the complaint. The outside firm's report was withheld from IAD for four months while put under "lock and key" by a highly placed County executive. The responses by Central HRD to IAD's inquiries were intentionally directed to the specific language in the complaint thus perpetuating the silence about extremely relevant information. The additional wrongdoing that was discovered was buried. If not for the dogged efforts of IAD it is highly unlikely the report would have ever surfaced. The withholding of the independent report and its contents appeared to have been a conscious choice - a very wrong choice. This event epitomizes the culture of silence surrounding suppression of negative events, and this culture continues to be nurtured by many.

The Grand Jury heard testimony again and again that Central HRD had no written policy, or procedure that required anyone to detail to the IAD what the independent report contained. *Well written policies, procedures, and guidelines are essential parts of optimizing the efficiencies, practices, and conduct of any department within any organization.* Training employees to execute these policies is a critical part of achieving the goals, mission statements, and ideals of a culture of any organization. The lack of written policy, guidance, and training was very much like piloting a boat without a rudder. The boat floundered because it had no way to steer.

Protectionism and Cronyism:

"The practice of favoritism based on relationships and connections – rather than someone who demonstrates top credentials and well-suited experience – ultimately results in vastly inferior government service to the public."¹

Cronyism, the practice of giving jobs and perks to friends, has been around for a very long time and will probably always be with us. There is nothing wrong with someone wanting to surround themselves with intelligent and supportive people. This makes a job easier and the work results are usually of higher quality. The problem with cronyism arises when people are placed in positions because of political agendas, relationships, and associations, and not because they are qualified for the position. This practice is exacerbated when protectionism is brought in and used to mask skill deficiencies. Even worse is when protectionism is used to cover up unacceptable behavior, and insulate and shield the individual responsible for the incorrect behavior or performance.

¹Daniel Garza "Government Cronyism is back" 03/12/2012

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The Grand Jury heard testimony from many individuals that there is a belief by County employees that elected officials and County executives are immune from discipline for inappropriate behavior and are untouchable due to their connections with other County, State and/or local officials. The Grand Jury was surprised when this was first asserted. However, after hearing testimony from so many on how the events of the recent years unfolded, the Grand Jury found this to be plausible.

The Grand Jury heard testimony from multiple witnesses that complaints of inappropriate behavior and sexual harassment had been known, discussed among peers, and reported for many years. This behavior was not confined to one department, or agency, and involved elected officials, executive management, and rank and file staff. In many instances the repercussions for the individual exhibiting sexual harassment was simply a transfer to another department. The Grand Jury heard testimony that many persons from executive management knew about the inappropriate conduct, but trivialized it to an act of flirting. This trivialization led to a perception by County employees of executives condoning inappropriate behavior. Persons subjected to sexual harassment believed they could not report this behavior to anyone because everyone already knew about the problem and nothing was ever done to correct it. They also feared reporting any incident because of possible retaliation, career curtailment, or job loss. It was believed that friendships and connections could be used to successfully repress the reporting of inappropriate conduct.

The Grand Jury heard testimony regarding other events that supported this perception of protection for the criminally charged individual. Both of the complaint letters discussed in a previous section of this study were given directly to the individual in question before a proper investigation could even begin. These actions destroyed any possible confidentiality for the persons subjected to the sexual harassment. The accused was forewarned and free to confront the persons being harassed. A valid investigation must be conducted in a way that offers the maximum amount of confidentiality for both the victim and the accused.

The perception of protectionism will be also marked by the actions taken following the completion of an investigation. When wrongdoing was confirmed there was an expectation that the behavior in question will be stopped. The greater the frequency and extent of wrongdoing usually leads to a higher degree of discipline. The findings of the independent investigation regarding the sexual harassment of multiple persons by the same individual aggressor occurring over a number of years resulted only in the voluntary resignation with a severance package for the alleged offender. Documents confirming the sexual harassment and possible criminal behavior were suppressed. There was no outreach to the victims; no counseling; and no effort to assess whether retaliation had occurred. The victim's fears were confirmed. They had bravely come forward and it did not matter. Protectionism was working – for the benefit of the accused.

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Personal Protectionism:

During testimony the Grand Jury found that various County executives and elected officials utilized “personal” protectionism. It is a common reaction that a person will try to distance themselves from unpleasant circumstances. This is particularly true in the political arena where associations with questionable people risk the loss of one’s own political capital. It is also true with persons working in the halls of executive County management and those aspiring to executive management. Common methods of handling such situations are: downplaying the knowledge of an event; downplaying one’s relationship with the person under scrutiny; and sequestering as much information as possible surrounding a questionable event.

During testimony the Grand Jury was quite surprised by how many highly placed County executives, elected officials, and peers of the accused professed to not really know the accused and described their relationship as professional only, and with no social interaction. This was expressed many times even though many of those testifying had long supported this individual’s political and County career. Each witness that testified on their distant relationship with the accused was contradicted by another witness, and that witness was contradicted by the next. If the Grand Jury believed each of the witnesses individually, the accused was friendless and had no interaction beyond a “hello” in the hallway. The Grand Jury questions how these witnesses, who supported his political aspirations and rapid rise to executive management, can now profess that any contact with him throughout the years was perfunctory. The Grand Jury views this conduct as a form of distancing, protectionism, and downplaying the relationships.

This study has already addressed the trivialization of the conduct by the accused and its effects. However, the downplaying of this conduct was evident in many areas of County management. Central HRD, having read the outside investigative report, originally relayed to IAD that the allegations contained in the complaint letters were unsubstantiated. After additional queries by IAD, HRD responded that the investigation only substantiated inappropriate language and engaging in inappropriate touching of female employees, such as hugging at inappropriate times. No mention was made of the much more egregious behavior described in the independent report.

When HRD first received the independent report, it did forward it to a member of the Office of County Counsel, the agency that provides legal advice on all County related matters. The report was discussed with at least one other associate, yet this agency, composed of experts in law, only reported on the possible violations of County policy on EEO and whether or not it would serve as the basis of a termination. The experts’ perceived role was to recommend the most immediate and cost effective solution for the County. This agency ignored, did not address, and took no action on the vividly described potential criminal activity by the accused. An agency, most likely schooled in aspects of criminal behavior, chose to ignore the obvious and downplay its responsibility, and to only advise on the cost of termination verses resignation. The Grand Jury has been advised that there are no written policies, procedures, or

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guidelines for a referral of possible criminal conduct to law enforcement agencies. This department relied on what was described as essentially common sense.

The cover-up of information was highly evident in how the outside independent report was handled. The Grand Jury heard testimony that County management hired an outside investigator because one person in the complaint was controversial, important, an executive with the County, and an elected official. Hiring an outside agency seemed to the Grand Jury to be a prudent step which would ensure objectivity, freedom from influence from any area in County government, and make certain the truth concerning all allegations would be discovered. It would also suggest that County government wanted to know the truth. Regrettably, the concept of how much truth should be known carried a very different interpretation by many. The independent firm delivered their report to a select few in the County which the Grand Jury finds as a judicious step. The executives who received the report relayed only enough information to motivate the voluntary resignation of the person that was investigated. After reviewing the exhibits provided by the District Attorney and listening to various testimonies, the Grand Jury found that word-smithing and semantic ruses were frequently used to deflect conversations about the content of the report and deter others from reading it.

Each member of the Board of Supervisors received a copy of the complaint that prompted the hiring of the outside investigative firm. When the outside report addressing all of the issues contained in the complaint was complete and available, each member of the Board of Supervisors was briefed individually. However, the information contained in the report was downplayed to a personnel issue and they were informed that appropriate action was being taken. Each member made their own independent decision to not read the report. What the Grand Jury finds perplexing is that the complaint which impelled hiring the outside firm contained a variety of allegations of policy violations by many people and the majority of the allegations were discussed in the outside report. How all allegations were funneled into a single "personnel issue" should have prompted more questions and curiosity as to the report contents.

Protection of the County:

During the investigative hearings, witnesses from various County departments told the Grand Jury their primary job was to protect the County from lawsuits. Protecting the County from lawsuits is an excellent goal and one that serves the taxpayer well, but not at the expense telling the truth and doing the right thing. The practice of using the County checkbook for the purpose of paying a severance package in exchange for a resignation and a promise not to file a lawsuit is a short term solution and could have even more expensive and far reaching consequences. This really amounts to paying people off. The thinking behind this type of solution is that it solves the problem by exiting a person who has violated County policies and work practices. It also gives the illusion that those in charge took corrective action. This practice circumvents the process of issuing a reprimand and/or termination for cause. It takes away accountability and any need for a pro-active assessment of why events of

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wrongdoing happened. To this point, a County elected official suggested that this report be suppressed because it may affect the costs of anticipated litigation.

During testimony it was explained to the Grand Jury that obtaining a voluntary resignation and a written statement promising not to sue the County from the individual named in the independent report was a “win” for the County. Using a narrowly focused strategy that applies to only one individual for an incident that encompasses many others shows a lack of risk assessment for an entire event. This strategy also reinforced the perception that the conduct of the accused did not warrant a discipline, such as a termination, and served to impugn the credibility of the victims. The Grand Jury is fairly certain that none of the victims think this strategy is a win.

The Grand Jury also believes that protection of the County was one of the reasons the outside independent report was kept out of sight and its existence mentioned only rarely. Many of the findings in the outside report could be viewed as an embarrassment to the County. Reading the outside report confirmed the inefficiencies and lack of effectiveness of various County departments. It also confirmed that fear was a leading reason why victims of sexual harassment were reluctant to come forward. Most people have experienced an incident of fear in the workplace, but the incident was normally short-lived. What the Grand Jury finds alarming is the length of time this prevailing aura of fear was present in County departments. This atmosphere of fear seemed to come from the very top of County government. Many witnesses who testified and persons interviewed by the Grand Jury expressed an aversion to presenting the progress or results of their work product to County elected officials and executive management because they had experienced severe criticism on a personal basis. This type of posturing is demoralizing and fosters insecurity about one’s job longevity. It also shows a lack of respect for the employee and takes away opportunities for necessary and spirited discussions on County projects, overall government, and problems as they naturally arise.

Have Corrections Been Made, Have Lessons Been Learned?:

As previously mentioned in this study, the County is currently re-centralizing its Human Resources Department. This is a very large and challenging endeavor and will take time. More importantly, it is a critical piece that is necessary to advance significant cultural change. Since approximately 1995 until 2013, each County agency had its own human resource department which operated independently and each was free to implement and train to their own interpretations regarding Federal, State, and County policies on EEO. With this re-centralization, the majority of County human resource personnel will report within one department – a good first step. However, the differences in interpretation and training will remain unless proactive measures are taken. Re-training to achieve consistent compliance in matters related to discrimination and harassment should be a priority in this new structure. There are many outside resources available to aid in attaining more in-depth knowledge relating to human resource matters. Local colleges and universities offer classes and certificates in human resource management which follow the guidelines set forth by the Society for Human

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Resource Management, a nationally recognized association devoted to promoting professionalism in the human resource field. In addition, the County provides tuition assistance, so obtaining a certificate, or attending classes, should not be a financial burden for an employee. The Grand Jury also learned that there is reluctance in requiring a new hire for a supervisory or management position in any human resources department to have certifications in human resource management or equivalent experience. Instead, the job posting will list these skills as “preferred” and the only mandated requirement will be based on job classification as it relates to a pay scale. It was conveyed to the Grand Jury that restrictions on posting job requirements are state mandated. The County interpretation of these restrictions needs to be reviewed for accuracy and possible revision. Without a review, this policy continues the problems that grew from having a decentralized HR Department staffed by many managers who had little or no training and little or no experience in human resource matters. This policy reinforces the lack of recognition of human resource management as a specialized discipline and career. Delaying the training of County HR personnel, and the lack of requirements for job experience for managers and supervisors, will delay the successful implementation of the new department and will delay the cultural change necessary to overcome the reluctance and fear of all County employees to come forward and report inappropriate behavior.

As of April 2013, the County has not provided any additional resources for County employees to report discrimination or sexual harassment. If someone wants to report an incident of sexual harassment, and they wish to do so with anonymity, the only currently advertised option is a fax or phone call to the “fraud” hotline operated by IAD. The Grand Jury does not understand how a claim of sexual harassment is related to “fraud”, and the Grand Jury is sure this is a source of confusion for many County employees. Within the Human Resource Services Department there is an EEO Access Office charged with investigating complaints on all harassment and discrimination issues. However, how to access this office and the duties prescribed to this office are still confusing to employees. This office has been chronically understaffed for ten years and there is no way to access this office with anonymity. Contacting this office should be a natural first step for employees to report the possibility of discrimination, harassment, or discomfort. One of the main reasons this office has not been viewed as a safe haven by employees is because they do not know its function. This is largely driven by the fact that employees have not been trained on what constitutes harassment and discrimination, and programs designed to heighten employee awareness of this office have been sporadic and minimal. As of April 2013, the EEO Access Office is staffed by one person. The Grand Jury has been advised that a new Manager for the EEO Access Office has been hired and the person has a strong and credentialed background in EEO law, interpretation, and implementation. Rather than waiting for the new director to settle in, the Grand Jury is in hopes that the County will initiate a program to educate and inform all County employees that the EEO Access Office is a safe haven and its mission is to protect confidentiality to every extent possible and the County will approve additional staffing to accommodate almost 17,000 employees.

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As stated at the beginning of this study, the Grand Jury participated in a number of investigative hearings on complaints of sexual harassment. All witnesses that testified expressed sympathy and support for the victims who had experienced sexual harassment. It appears that kind and caring words behind closed doors were the only actions taken in support of the victims. There has been no coordinated effort to offer counseling and no assessment of retaliation during their ordeals, or after. The Grand Jury recognizes that the victims will want their names to remain confidential, however, that should not preclude the County from setting up an independent and confidential program to support an outreach for those harmed. The Grand Jury questioned many County elected officials and County executives about why no outreach program was available. The response was usually that they didn't know or that some other agency was taking care of it. Management, especially executive and elected management, must take responsibility for initiating curative action when a wrong has been identified. Taking no action sends a message that the events of the last few years are insignificant and not worthy of the time and resources of the County. It also further solidifies the perception that a safe and equitable working environment is, at times, not a priority or a reality.

The Grand Jury has been advised that a new training program on discrimination and sexual harassment will be provided to all employees in the future. Previously, this type of training was only offered to supervisors and management as mandated by EEOC law. The Grand Jury applauds this step and sees it as a sincere commitment to foster a safe workplace. But, training alone will not change the perception of tolerance of inappropriate behavior. That will come only with a change in culture and that change starts at the top. The County's elected officials and executive management must lead by example. There are many, many opportunities every day to communicate their pledge to stop inappropriate behavior in the workplace. This message should be delivered as often as possible when the rank and file are present. If an employee thinks something is important to their boss, it will become important to the employee.

The Grand Jury has heard many presentations by executive management and elected officials during its current tenure. The subject of culture and the atmosphere that allowed some of the egregious behavior to occur was usually a topic of discussion in these presentations. The Grand Jury has heard that many think the culture in the County has changed and inappropriate behavior will never be tolerated, or ignored, as it was in the past. However, the Grand Jury does not find this to be true after hearing testimony and reviewing a series of fairly recent emails that shows the County may not have learned its lesson. The event presented to the Grand Jury is as follows:

An elected official from an Orange County city was being considered for a management position in one of the County agencies. This person had worked for this County agency in years prior and had sexually harassed multiple female employees in the department. When this person's name surfaced as a candidate, one of the females brought this to the attention of executive management. The harassment was confirmed by many others in this department. The hiring process for this person did not stop and continued for

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another two months. The female who had been harassed and frustrated by the continuation of the hiring process within the agency where she worked, contacted the new Human Resource Services Department. Within one day, the hiring process for this person was stopped.

The full exchange in the emails that the Grand Jury read showed fear from many in the department that the political alliances of this candidate would outweigh the fact that he had previously sexually harassed County employees. The disregard, by an agency executive, of confirmed sexual harassment clearly showed an ongoing tolerance for inappropriate behavior for elected officials and potential County managers at the expense of safe and equitable working environment.

This recent event shows two approaches in dealing with sexual harassment in the workplace. One was ignoring and dismissing that there was a problem, and one was enforcing the County written policy on sexual harassment that was done without regard to political repercussions. The Grand Jury believes this event shows the continuation of a culture in their agencies that officials and executive managers have loudly denied was still in existence.

However, the Grand Jury finds that there is a light at the end of a dark tunnel. A change in culture often starts with one step and that step has been taken. It is now up to the leadership in all areas of County government to follow example and take step two. Only speaking to a change in culture will result in no change. The culture will be changed by actions and examples and no elected official or County executive, manager, or supervisor should feel they are exempt from leading by example.

“Example is not the main thing in influencing others, it is the only thing.”²

FINDINGS

In accordance with California Penal Code Sections §933 and §933.05, the 2012 - 2013 Grand Jury requests responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of The County of Orange Human Resource Services Department, The County of Orange Chief Executive Officer, County Counsel for the County of Orange and The County of Orange Board of Supervisors, the 2012 - 2013 Orange County Grand Jury has arrived at eight principal findings as follows:

- F1 There is a lack of written policies, procedures, and guidelines relating to EEO laws and employee complaints in the County Human Resource Services Department. The County Human Resource Services Department is currently

²Albert Schweitzer

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personnel constrained due to its efforts in its re-centralization and should look to other ways to produce their policies.

- F2 The training of County employees on matters of discrimination and harassment is inadequate.
- F3 The training of Human Resource Services personnel is not consistent.
- F4 Mandated qualifications for the position of Supervisor or Manager in the Human Resource Services Department lack the job specific requirement for human resource schooling, certifications, or equivalent experience.
- F5 Written policies, procedures, and guidelines for the referral of possible criminal conduct to law enforcement agencies do not exist.
- F6 Currently there is no way for an employee to contact the EEO Access Office with anonymity. If an employee wants to make a complaint and not reveal their name the only County mechanism to do so is the “fraud hotline” which may be confusing to employees who wish to report discrimination or harassment.
- F7 The County did not initiate an outreach to the victims who had experienced sexual harassment over the last few years.
- F8 Other than re-issuing a yearly statement on the County policy regarding discrimination and harassment, County elected officials and executive management have undertaken no pro-active measures to address and change the County culture that allowed the tolerance of inappropriate behavior that was present for years. This culture continues and needs leadership to change.

RECOMMENDATIONS

In accordance with California Penal Code Sections §933 and §933.05, the 2012 - 2013 Grand Jury requests responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of The County of Orange Human Resource Services Department and The County of Orange Chief Executive Officer, County Counsel for the County of Orange and The County of Orange Board of Supervisors the 2012 - 2013 Orange County Grand Jury makes the following eight recommendations.

- R1 The County Human Resource Services Department shall prepare and publish policies, procedures, and guidelines related to all employee complaints and how they are investigated. Special attention, or separate policies, should be published for complaints related to discrimination and harassment to ensure they meet the Employer Responsibilities outlined in state and federal statute. If

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necessary, the County Human Resource Services Department should utilize the services of outside companies specializing in human resource matters. The Human Resource Services Department should develop, approve, and publish the policies and procedures within six months. The Board of Supervisors should support this effort with adequate funding. (F1)

- R2 All County employees and elected County officials shall undergo training on discrimination and harassment. At a minimum, all employees classified as supervisors and above should receive in-person training every two years, as well as have access to on-line training. The Board of Supervisors, and any other elected County officials, should participate in the in-person training at a minimum of once every two years. The Board of Supervisors should support this effort with adequate funding. (F2)
- R3 The County Human Resource Services Department should develop specific training schedules for all of its personnel to ensure consistency in addressing County employee issues. The training should be ongoing and include both internal and external sources. Additional and specific training should be given to those in charge of investigating complaints. (F3)
- R4 The County Human Resource Services Department shall re-write the job qualifications for any position of supervisor and above in the Human Resource Services Department to include mandatory certification, schooling, or equivalent experience in the human resource field. (F4)
- R5 The Human Resource Services Department, with input from County Counsel shall draft policies, procedures, and guidelines for all agencies and departments on handling the reporting of potential criminal conduct by County employees. (F5)
- R6 The Human Resource Services Department should install a confidential communication source for employees who want to file complaints relating to discrimination or harassment with anonymity. The system should include multiple access paths such as mail, phone, fax, or email. Notification of this new County service should be accompanied by a vigorous email campaign and announcements by senior County management in meetings and their communications to their staff. Posters identifying how an employee can file a confidential complaint should be permanently posted in appropriate locations. The Board of Supervisors should support this effort with adequate funding. (F6)
- R7 The Board of Supervisors, in conjunction with the office of the CEO, the Human Resource Services Department, and with input on legal perspectives from County Counsel, shall initiate a formal outreach program for persons who have experienced discrimination or sexual harassment. The outreach should include counseling, if wanted, and an assessment of possible retaliation against any of the victims. (F7)

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- R8 The Board of Supervisors and the Office of the CEO will define and implement a series of steps to affirm their leadership in achieving a harassment free workplace: (F8)
- a. Refresh the current board resolution so that it contains clear complaint handling protocols.
 - b. Evaluate whether a policy on office relationships is appropriate for the County especially when it concerns managers and subordinates.
 - c. Display a more pro-active voice, more than once a year, on delivering the message that having a harassment free environment is important.
 - d. Evaluate hiring/training discrimination and harassment contact officers.
 - e. Discontinue negative comments on anonymous complaints.
 - f. Personally attend different County department meetings that provide opportunities to express the County commitment to a harassment free workplace.

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 therefor.

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

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(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 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 requested:

Orange County Human Resource Services Department: F1, F2, F3, F4, F 5, F6, F7

Orange County, County Executive Office: F6, F7, F8

Office of County Counsel: F5, F7

Responses Required:

Orange County Board of Supervisors: F6, F7, F8

Responses Requested:

Orange County Human Resource Services Department: R1, R2, R3, R4, R5, R6, R7

Orange County, County Executive Office: R6, R7, R8

Office of County Counsel: R5 ,R7

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Responses Required:

Orange County Board of Supervisors: R1, R2, R6, R7,R8.

**The Goal of Equal Employment
Opportunity: NO VICTIMS**



2012-2013

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FOREWORD

The 2012-2013 Grand Jury was sworn in on July 2, 2012. Within two weeks, the Grand Jury learned of allegations of inappropriate behavior which resulted in employee victimization. Whether a spouse, parent, significant other, or friend, the Grand Jury believed strongly that “NO VICTIMS” was the goal for 2012-2013. This concern has resulted in three related studies: *A Call for Ethical Standards: Corruption in Orange County*, *The Culture of Harassment: Change on the Horizon*, and this study comparing Equal Employment Opportunity (EEO) procedures in Orange County cities to County government.

SUMMARY

Under (EEO) protections, sexual harassment is unlawful. Harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment.

Throughout 2011 and 2012, there was intrigue and rumors, and eventually the OC District Attorney filed criminal charges against a high-ranking County executive. News outlets reported that the senior employee sexually battered co-workers in the workplace. The Grand Jury was privy to information concerning the alleged behavior. Although details will not be nor can they be revealed in this study, suffice it to say that each Grand Jury Panel Member was appalled at the alleged behavior and alarmed by the ineptitude of County managers who investigated complaints of sexual misconduct. Clearly these events were traumatizing for the victims and an embarrassment to the County. Subsequently, County leaders made changes to ensure the swift and appropriate handling of future EEO complaints.

The Grand Jury is pleased to report that Orange County cities, as employers, appear to be on the cutting edge in their awareness of the potential tragedies and/or liabilities associated with sexual harassment and discrimination. The Grand Jury commends these municipalities for their vigilance, the seriousness with which they approach these very important topics and the training provided to all employees. Orange County municipalities not only adhere to Federal and State legislation, but honor it.

Since the revelations and the exit of the accused county executive, the County's efforts are worthy of note as well. Recentralization of the Human Resources function, now called the Human Resource Services Department (HRSD), and a significant investment in a broad training initiative will enhance employee protections and reduce liability exposure. The County's continued efforts are critical to achieving these goals.

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Commendations, while satisfying to report, carry with them the obligation to continue the crusade against discrimination, harassment, and retaliation. Consistent attention to fine tuning these efforts will ensure strict adherence to the law.

REASON FOR STUDY

The Grand Jury's role as civil watchdog led the Grand Jury to explore the matter of sexual harassment in public sector government.

How well are the EEO policies, procedures, and practices actually protecting City and County government employees? Realistically, policies and procedures merely define the rules. It is people who enforce the rules that truly protect other people. Some will claim that information in this report is history and old news. It is the opinion of the Grand Jury that this information is not only relevant, but is required in order to raise the public's awareness to the importance of compliance with Federal and State EEO legislation. The goal is to learn from mistakes and to take cautionary action to avoid repeating them.

Sexual harassment, discrimination, and retaliation have no place in any employment setting, particularly those where the entities are expected to respect the value of its employees and the people they serve.

METHOD OF INVESTIGATION

The 2012-2013 Orange County Grand Jury performed the following tasks to collect information:

- Developed and sent questionnaires to all 34 OC cities and to the County's Director of the newly recentralized HRSD regarding topics including training, receipt of complaints and method of investigations;
- Interviewed a sampling of City executives and Human Resource Managers;
- Interviewed all County Supervisors, a number of executives and department heads;
- Reviewed EEO complaint statistics for the past 5 years in both OC cities and the County;
- Documented and reviewed confidential communications with County and City personnel regarding EEO incidents and violations;
- Conducted research on legal regulations and protected classes covered under both State of California and Federal harassment and discrimination laws.¹

In the Beginning – The Genesis of Protections

¹ <http://www.history.com/topics/civil-rights-act>

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The Civil Rights Act of 1964 was passed on July 2nd of that year. The untimely loss of President John F. Kennedy in November 1963 to an assassin's bullet threatened to derail the legislation he had long championed. However, a new champion, an unlikely one in the minds of most civil rights organizations, was found in the person of the new President, Lyndon B. Johnson.



July 2, 1964 LBJ signs Civil rights Legislation as members of Congress look on.

Five days after the assassination, with the nation still grieving, President Johnson eloquently invoked the recent tragedy in an effort to give some meaning to that most senseless of acts. Addressing a Joint Session of Congress, President Johnson stated

*“We have talked long enough in this country about civil rights. It is time to write the next chapter and to write it in the books of law No eulogy could more eloquently honor President Kennedy's memory than the earliest possible passage of the civil rights bill for which he fought so long.”*²

From the Civil Rights Act of 1964 to the present, civil rights have expanded from primarily a rural issue (strongly linked to voting rights) to now include many categories/classes to ensure all Americans are afforded equal opportunity, dignity and respect in all aspects of American life. This report focuses on the employment aspect.

² www.quotes.net/authors/Lyndon+B.+Johnson

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The Federal Definition of Sexual Harassment

In 1972, the United States Congress created the Equal Employment Opportunity Commission (EEOC). The EEOC was empowered to enforce Title VII of the Civil Rights Act of 1964. The EEOC created regulations prohibiting sexual harassment and defined harassment as a form of sexual discrimination. Since 1972, the definitions and categories of what constitutes sexual harassment have expanded and now include several areas not originally defined.

It is unlawful to harass individuals because of gender. Harassment can include any unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature only. Harassment does not have to be of a sexual nature and can include offensive remarks about a person's gender. For example, it is illegal to harass a woman by making offensive comments about women in general. Both the victim and the harasser can be either a woman or a man, and the victim and harasser can be the same gender.³

The law doesn't prohibit simple teasing, offhand comments, or isolated incidents that may not be considered serious. But teasing or off-hand comments are illegal when they are so frequent or so severe that they create a hostile or offensive work environment. The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, any employee, or someone who is not an employee at all, such as a client or vendor. When a manager or supervisor expects "Quid Pro Quo"^{4, 5} to achieve their goals, it is considered sexual harassment in the eyes of the law.

Sexual harassment is not specifically aimed at protected classes. Federal laws identify legally protected classes as race, color, religion, national origin, age, gender and disability.

Several regulations comprise Federal (EEO) Laws:

- Title VII of the Civil Rights Act of 1964 - prohibits employment discrimination based on race, color, religion, sex, or national origin;
- Equal Pay Act of 1963 (EPA) protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination;
- Age Discrimination in Employment Act of 1967 (ADEA) protects individuals who are 40 years of age or older;
- Title I and Title V of the Americans with Disabilities Act (ADA) of 1990 prohibits employment discrimination against qualified individuals with

³ <http://oag.ca.gov/publications/CRhandbook/ch2>

⁴ www.fs.fed.us/cr/sepm/fwp/correspondence/sex_harassment.html

⁵ "Quid Pro Quo" in Latin refers to a favor or advantage granted in return for something

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- disabilities in the private sector, and in State and local governments; in addition, reasonable accommodation for the disabled was mandated.
- Sections 501 and 505 of the Rehabilitation Act of 1973 prohibit discrimination against qualified individuals with disabilities who work in the Federal government;
 - Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employment discrimination based on genetic information about an applicant, employee, or former employee;
 - The Civil Rights Act of 1991 includes the ability to award monetary damages in cases of intentional employment discrimination;
 - It is legally unlawful to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit;
 - Regulations require that employers reasonably accommodate applicants' and employees' sincerely held religious practices, unless doing so would impose an undue burden on the operation of the employer's business.⁶

The Equal Employment Opportunity Commission (EEOC) enforces these laws and provides oversight and coordination of all EEO regulations, practices and policies. Employers are required to post notices to all employees advising them of their rights under the law and an employee's right to be free from retaliation. These notices must be accessible to persons with visual or other disabilities that affect their ability to read.

State of California – Additional Regulations

In California, the Fair Employment and Housing Act (FEHA) is the primary law prohibiting discrimination in employment, housing and public accommodation. At the time of its adoption, the Legislature reaffirmed that it is the public policy of California to protect and safeguard such rights and opportunities.⁷ The Law is administered by the Department of Fair Employment and Housing (DFEH).

Laws related to harassment and discrimination are not automatically duplicative between Federal and State governments. While the basic tenets remain the same, protected classes and the right to sue for monetary damages may differ.

In California, prohibitions against harassment, discrimination and retaliation are based on race, religious creed, color, national origin, ancestry, physical disability (including HIV/AIDS), mental disability, medical condition, marital status, sex (including pregnancy, childbirth, or related medical conditions), age (40 or above), or sexual orientation. The law refers specifically to an affected person in a protected class.

FEHA also protects contract workers from harassment in the workplace. The same protection as outlined above applies to contract workers.

⁶ <http://www.eeoc.gov/facts/qanda.html>

⁷ <http://oag.ca.gov/publications/CRhandbook/ch2>

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State of California - Definition of Sexual Harassment

The State of California defines sexual harassment as any unsolicited or unwelcome sexual advance, requests for sexual favors or other verbal, physical, visual or written conduct of a sexual nature directed to persons of the same or opposite sex when:

1. Submission to such conduct is made either explicitly or implicitly as a term or condition of employment;
2. Submission to or rejection of such conduct by an employee is used as a basis for employment decisions affecting the employee; or
3. Such conduct has the purpose or effect of substantially interfering with an employee's work performance or creating an intimidating, hostile or otherwise offensive work environment.

Additionally, State court has defined two types of sexual harassment:

1. **Quid Pro Quo:** This form of sexual harassment occurs when a supervisor or manager:
 - a. Demands, as an explicit or implied term or condition of employment or employment-related decisions, a subordinate submit to sexual advances (this may include situations which began as consensual relationships, but which later ceased to be consensual); and/or
 - b. Makes requests for sexual favors or other verbal, visual or physical conduct of a sexual nature that is an explicit or implied term or condition of employment decisions.

Examples of Quid Pro Quo harassment include:

- a. Requests for sexual favors in exchange for a promotion or raise;
 - b. Expressed or implied statements that a person will be demoted or fired if she or he does not submit to a sexual request; and/or
 - c. Carrying out the threat.
2. **Hostile Work Environment:** The courts look at the totality of the circumstances surrounding the alleged incidents of harassment to determine whether unlawful conduct has occurred. Generally, there must be a pattern of unlawful conduct, although a single serious incident in some cases, such as a sexual battery, is enough to constitute sexual harassment. This form of sexual harassment occurs when an individual is subjected to any unwelcome sexual advances or other gender-based conduct that is sufficiently severe or pervasive as to interfere with the individual's work performance or creates an intimidating, hostile or offensive work environment. The harasser can be a manager, supervisor, co-worker, any employee, or in certain circumstances, possibly even a non-employee, such as a supplier or customer. The intent of the person accused of sexual harassment is

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of secondary importance. The impact of the offensive behavior on the offended person is the primary factor in determining if sexual harassment has occurred.⁸

Cities – How They Handle EEO Matters

The 2012-2013 Grand Jury developed and distributed a questionnaire to the Human Resource Managers of the 34 cities in Orange County which included questions related to EEO. All cities responded, with the exception of the City of Westminster. The County's Director of HRSD also responded to the same questions.⁹

The Grand Jury's study is based on responses from 33 cities and the County. Because the Grand Jury cannot presume to interpret or somehow guess at the meaning of an entity's response, the responses have been reported as indicated on the questionnaire. Where partial responses were given, efforts were made to obtain additional clarification.

The following represents feedback from the cities and County HRSD:

Do you have policies and procedures that comply with EEO laws, specifically Harassment, Discrimination and Retaliation prevention?

All cities and the County have established policies and procedures that comply with EEO law.

Are employees given an employee Handbook that includes EEO Anti-Harassment, Anti-Discrimination and Anti-Retaliation materials?

All cities provided materials documenting their comprehensive compliance with Federal and State legal requirements. These materials included Employee Handbooks, Memorandums of Understanding with labor groups and specific city-adopted policies.

The County has policies and procedures governing harassment, discrimination, retaliation, methods for filing complaints which the County updates annually to ensure compliance. The Chair of the Orange County Board of Supervisors sends an annual letter to employees reminding them of their rights and responsibilities. In addition, the New Hire Packet contains EEO information.

Is your Human Resources Department Centralized?

⁸ www.hostileworkenvironmentguide.com/definitionwhostileworkenvironment.html

⁹ Grand Jury Questionnaire, December, 2012

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Because cities have fewer employees than the County, it is no surprise that all cities responded that their HR Department is centralized. Centralization refers to the grouping of all traditional HR functions within one Department.

As a cost-saving measure, the County moved to a decentralized human resources model after the bankruptcy in 1994. Under decentralization most County agencies had their own HR division responsible for the delivery of HR services. Although each agency HR staff could and was encouraged to consult regularly with the County's Human Resource Department, the reality was that communication was limited. Some agency HR departments had issues with compliance, harassment, discrimination, and/or retaliation violations which they often did not recognize. As a consequence, some violations were observed or, at a minimum overlooked, and not reported to Central HRD as mandated by County policy. In addition, there were routine deviations from recruitment and selection processes. HR staff frequently lacked specific HR expertise and experience. The lack of training contributed to some instances of favoritism and recruitment violations.

In the wake of the HRD Performance Audit, the County is currently implementing the recentralization of all HR functions into one department (HRSD). To further reinforce the change in functionality, the former HRD has been renamed the Human Resource Services Department (HRSD). This change will involve additional training of existing personnel and hiring of skilled HR professionals.

Is Anti-Harassment, Anti-Discrimination and Prevention of Retaliation training given to HR staff, with particular attention to conducting investigation of complaints?

All cities indicated that HR personnel receive EEO training with an emphasis on investigatory training. This training includes, but is not limited to, Americans with Disabilities Act (ADA) Compliance, Leave Rights, Preventing Harassment and Discrimination in the Workplace.

County restructuring into HRSD resulted in the implementation of procedures to train HR staff throughout the year.¹⁰

How often is EEO Anti-Harassment, Anti-Discrimination and Prevention of Retaliation training given to management, supervision and line staff?

State and Federal law require training for management and supervision every two years, but defines no specific requirement for line staff. The cities responded to this question as shown in Table 1 – Grand Jury Questionnaire, Question No. 6 .

¹⁰ Presentation by HRSD Director, November 26, 2012

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FREQUENCY OF TRAINING	MANAGEMENT	SUPERVISION	LINE STAFF
County Board of Supervisors	Every 2 Years	Every 2 Years	None
County HRSD	Every 2 Years	Every 2 Years	In late 2013
Aliso Viejo	Every 2 Years	Every 2 Years	None
Anaheim	Every Year	Every Year	Every Year
Brea	Every 2 Years	Every 2 Years	As Needed
Buena Park	Every 2 Years	Every 2 Years	Every 2 Years
Costa Mesa	Every 6 Months	2+ Per Year	None
Cypress	Every 2 Years	Every 2 Years	As Needed
Dana Point	Every 2 Years	Every 2 Years	Every 2 Years
Fountain Valley	Every 2 Years	Every 2 Years	Every 2 Years
Fullerton	Every 2 Years	Every 2 Years	As Needed
Garden Grove	Every 2 Years	Every 2 Years	Every 2 Years
Huntington Beach	Every 2 Years	Every 2 Years	Every 2 Years
Irvine	Every 2 Years	Every 2 Years	As Needed
La Habra	Every 2 Years	Every 2 Years	As Needed
La Palma	Every 2 Years	Every 2 Years	As Needed
Laguna Beach	Every 2 Years	Every 2 Years	As Needed
Laguna Hills	Every 2 Years	Every 2 Years	Every 2 Years
Laguna Niguel	Every 2 Years	Every 2 Years	None
Laguna Woods	Every 2 Years	Every 2 Years	Every 2 Years
Lake Forest	Every 2 Years	Every 2 Years	As Needed
Los Alamitos	Every Year	Every Year	Every Year
Mission Viejo	Every 2 Years	Every 2 Years	As Needed
Newport Beach	Every 2 Years	Every 2 Years	As Needed
Orange	Every 2 Years	Every 2 Years	None
Placentia	Every 2 Years	Every 2 Years	As Needed
Rancho Santa Margarita	Every 2 Years	Every 2 Years	None
San Clemente	Every 2 Years	Every 2 Years	As Needed
San Juan Capistrano	Every 2 Years	Every 2 Years	None
Santa Ana	Every 2 Years	Every 2 Years	As Needed
Seal Beach	Every 2 Years	Every 2 Years	As Needed
Stanton	Every 2 Years	Every 2 Years	Every 2 Years
Tustin	Every 2 Years	Every 2 Years	Every 2 Years
Villa Park	Every 2 Years	Every 2 Years	None
Westminster	NO RESPONSE	NO RESPONSE	NO RESPONSE
Yorba Linda	Every 2 Years	Every Two Years	None

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All cities are compliant with State and Federal law. Best practices and risk management make it prudent to provide training for line staff. Since it is line staff that generally files EEO complaints, it is critical that they understand their rights and their recourse when filing complaints, i.e. being able to make the distinction between acceptable and unacceptable behavior. While a behavior may be annoying, it may not meet the test of unacceptability in EEO terms.

The County provides on-line training for management and supervisors, however, limited training has been offered to line staff in only some departments. In 2013, HRSD will begin classroom training for management and supervisors and, at a minimum, online training for line staff. It is the considered opinion and experience of the Grand Jury that classroom training is far more effective than on-line training which provides limited opportunity for personal interaction.

How soon after promotion to management or supervision is an employee required to attend EEO Anti-Harassment, Discrimination and Retaliation training (AB1825 law requires training within 6 months)?

All cities complete training within six months of a promotion to supervisor.

Historically, County government did not have policies and procedures to comply with AB1825. Recent changes in HRSD address this issue and a policy to train new supervisors within six months as required by law has already been established, yet another example of the proactive efforts of the newly reorganized HRSD.

Do you use outside companies/consultants for EEO training?

All cities in Orange County use highly recognized and respected companies/consultants such as Liebert Cassidy Whitmore, Global Compliance, HR Consortiums, and Willis Training Solutions. Some training firms, in order to make training more cost-effective for public sector employers, invite employers within a geographic area to join training consortiums and share the cost thus enabling more cities to provide training to their employees.

The County has also used Liebert Cassidy Whitmore etc. and has recently solicited a Request for Proposal (RFP) to prospective vendors, seeking bids to expand human resource training for all employees as well as for HRSD staff.

What is your annual budget to comply with EEO mandated laws and regulations?

Cities generally budget annually for training. EEO training expenditures are often included in the Human Resource Services Department budget. HR training budgets range from zero to \$157,000 annually. The range in budgets appears to be proportional to the number of city employees. Smaller cities (Aliso Viejo, Villa Park, Dana Point, and

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Fountain Valley) do not have a dedicated budget line item, where larger cities (Irvine, Anaheim, Orange, etc.) have a dedicated budget line item to cover training expenses.

The County currently has budgeted sufficient funds (\$234,952) to provide training for management and supervision and for expenses to hire outside expertise to investigate EEO complaints and issues when needed. The Board of Supervisors has committed funds for increasing the budget for EEO training to include all employees.

Do you have a documented process for EEO complaint notification, investigation and resolution?

All responding cities in Orange County have documented processes to manage EEO complaints (notification, investigation and resolution).

County HRSD recently implemented procedures to define a clear and concise process for the receipt, investigation and resolution of EEO complaints/incidents.

When a conflict of interest exists, what options are available to employees and/or staff to ensure a fair and unbiased investigation?

All responding cities in Orange County have escalation processes to effectively address conflicts of interest related to complaints as they may arise.

The County recently established a comprehensive escalation process. To reinforce this new process, the Directors of HRSD, Internal Audit, and County Counsel created a Compliance Oversight Committee (COC) to review EEO related complaints received by the Department of Internal Audit's fraud hotline, the EEO Access Office, and complaints regarding executive management or elected officials. An example of concern the COC might explore is how best to handle a complaint directed at the complainant's supervisor, ensuring that a subordinate is never assigned to investigate his or her supervisor.

Are the names and phone numbers of internal and /or external EEO contacts documented and distributed to all employees regarding HR/EEO reporting?

All responding cities answered affirmatively to this question. Commendably, the cities have multiple methods for an employee to file a grievance or complaint.

As noted earlier, the County issues an annual letter from the Chair of the Board of Supervisors, which includes the various filing procedures available to its 17,000 employees. Lunch and break rooms contain posters that include procedures to file an EEO complaint. The existing County EEO Access Office has been chronically understaffed. With the recent hiring of an individual experienced in EEO and related investigations, communication with employees and executive management is expected

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to improve dramatically. In addition, an additional position has been allocated to the EEO Access Office and will be filled in the near future.

Is your city currently involved in any litigation concerning EEO Harassment, Discrimination or Retaliation complaints?

The cities responded as follows:

1. **Yes** - Buena Park, Huntington Beach, Newport Beach, Santa Ana,
2. **No** - Aliso Viejo, Anaheim, Brea, Costa Mesa, Cypress, Dana Point, Fountain Valley, Fullerton, Garden Grove, Irvine, Laguna Beach, La Habra, La Palma, Laguna Hills, Laguna Niguel, Lake Forest, Laguna Woods, Los Alamitos, Mission Viejo, Orange, Seal Beach, Placentia, Rancho Santa Margarita, San Clemente, San Juan Capistrano, Stanton, Tustin, Villa Park, Yorba Linda.

The County responded as follows:

Yes - With approximately 17,000 employees, the County has averaged 50 EEO complaints per year. It is worth noting that the 50 complaints may represent only those actually received by the previous HRD and could easily have excluded statistics from the decentralized HRD staff within individual departments. Centralized HRSD will be able to provide more comprehensive statistics. County departments headed by an elected official are not required to report to or be part of the recentralized HRSD. Major problems for the County are all County-wide complaints not being reported and whether or not the assigned investigator is properly trained

The Grand Jury acknowledges that the difference in the number of complaints, when comparing cities with the County, is not statistically material. All of the responding entities have had EEO complaints; all have procedures for handling EEO complaints. Given size, and notwithstanding the reporting concerns noted above, proportionately both cities and County appear to have a similar number of EEO complaints.

Do you have employment practices liability coverage for HR/EEOC?

There are several types of insurance coverage that a city may have. Employment practices liability coverage for EEO would likely be part of a governmental entity's Liability Protection Program. Not all, but many, public entities avail themselves of membership in Joint Powers Authorities which provide insurance coverage at a more reasonable cost for members of their multi-member insurance pool. In this type of arrangement, each member's initial premiums are based on its size and annual budget. Member entities also carry their own Self-Insured Retention (SIR), which is similar to either a stop-loss or deductible. If the liability cost of a claim exceeds the individual member's SIR, Pool coverage would then take over. Ultimately, all members of the Pool share costs, making a Joint Powers Authority a prudent risk management protection route.¹¹

¹¹ www.cj pia.org/4dcgi/programs/coverage_summaries.html

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Responses from cities vary as shown in the following:

1. Aliso Viejo is insured up to \$50 million (SIR not specified);
2. Anaheim is insured for \$4 million through SIR and ACCEL;
3. Brea is insured up to \$41 million, with an SIR of the first \$150,000;
4. Buena Park is insured (maximum amount not specified) and is self-insured for the first \$150,000;
5. Costa Mesa is insured up to \$10 million and self-insured for the first \$150,000;
6. Cypress is insured up to \$41 million and self-insured for the first \$150,000;
7. Dana Point is insured up to \$50 million (Deductible not specified);
8. Fountain Valley – Has insurance, but did not specify the amount;
9. Fullerton is self-insured for claims up to \$2 million, with additional coverage up to \$30 million;
10. Garden Grove is self-insured;
11. Huntington Beach is insured up to \$20,000,000 and is self-insured for the first \$1,000,000;
12. Irvine is insured up to \$1 million, with an SIR of the first \$150,000;
13. La Habra is insured up to \$12 million. (Deductible not specified);
14. La Palma is insured up to \$50 million, with an SIR of the first \$5 million;
15. Laguna Beach is self-insured with Pool coverage to \$1million; additional coverage to \$40 million;
16. Laguna Hills is insured for the first \$1 million (maximum amount was not specified).
17. Laguna Niguel is insured up to \$50 million (Deductible not specified);
18. Laguna Woods is self-insured;
19. Lake Forest is insured up to \$50 million (Deductible not specified);
20. Los Alamitos is self-insured;
21. Mission Viejo is insured up to \$15 million and self-insured for the first \$5.5 million;
22. Newport Beach is insured up to \$10 million and self-insured for the first \$500,000;
23. Orange has a \$200,000 policy through the California Insurance Pool Authority;
24. Placentia is self-insured;
25. Rancho Santa Margarita is insured up to \$1 million and self-insured for the first \$10,000;
26. San Clemente is insured up to \$50 million (Deductible not specified);
27. San Juan Capistrano is insured up to \$50 million with no deductible;
28. Santa Ana is self-insured for Liability up to \$1 million with Excess Liability coverage up to \$52 million;
29. Seal Beach is insured up to \$50 million (Deductible not specified);
30. Stanton is self-insured up to \$25,000;
31. Tustin is insured up to \$2 million with an SIR of the first \$150,000;
32. Villa Park is insured up to \$50 million.

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33. Yorba Linda is insured up to \$28 million and self-insured for the first \$150,000.

The County is self-insured for the first \$5 million and has coverage for claims extending beyond the first \$5 million, up to maximum coverage of \$100 million per occurrence.

FINDINGS

In accordance with California Penal Code Sections 933 and Section 933.05, the 2012 - 2013 Grand Jury requests responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of the policies, procedures and level of EEO protections City and County government provide employees in municipal and county government in Orange County, the 2012 - 2013 Orange County Grand Jury has arrived at the six principal findings as follows (NOTE: These findings are unconfirmed with the City of Westminster who did not respond to the Grand Jury's Questionnaire):

- F1 Municipalities in Orange County cities are well-versed in EEO issues and maintain exemplary compliance strategies.
- F2 In an effort to improve Human Resource efficiencies and increase focus on EEO, the County has centralized its Human Resource functions in the new HRSD.
- F3 The County has implemented a Compliance Oversight Committee (COC) to review all EEO complaints in the County.
- F4 Complaint ratios between OC cities and the County of Orange are similar; but differences in how previous complaints were handled in the County led to major problems.
- F5 The County and several cities do not offer, or provide limited, training in harassment, discrimination, and retaliation, particularly for line staff. At this time, although line staff training is not required, all staff benefit from EEO training.
- F6 There are several Risk Management Joint Powers Insurance Pools (of which most cities are members) to ensure adequate coverage and sharing of liability with other member entities.

RECOMMENDATIONS

In accordance with California Penal Code Sections §933 and §933.05, the 2012 - 2013 Grand Jury requests responses from each agency affected by the

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

Based on its investigation of EEO practices and compliance in the 33 responding cities and Orange County Government, the Grand Jury makes the following four recommendations:

- R1 All OC cities and County government shall include funding for training of management and supervision as required by law and ensure training for all employees every two to three years. (F2, F3, F4, F5)
- R2 OC cities shall review SIR aggregate limits every five years to assess changes in risk management economies and insurance pool mix. (F6)
- R3 OC cities and the County of Orange government shall continue efforts to utilize best practices with respect to Harassment, Discrimination, and Retaliation. (F1, F3)
- R4 The OC Board of Supervisors shall continue to provide funding and resources sufficient to complete HRSD's centralization program. (F2)

REQUIREMENTS AND INSTRUCTIONS:

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

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- (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 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 the Penal Code Section §933.05 are required from:

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Responses Required/Requested:

<u>REQUIRED/REQUESTED RESPONSES</u>	<u>F1</u>	<u>F2</u>	<u>F3</u>	<u>F4</u>	<u>F5</u>	<u>F6</u>		<u>R1</u>	<u>R2</u>	<u>R3</u>	<u>R4</u>
<u>OC Board of Supervisors</u>								x	x		x
<u>OC Director of HRSD</u>		x	x	x	x			x	x	x	
<u>OC CEO's Office</u>			x								
<u>OC Director of Internal Audit</u>			x								
<u>Aliso Viejo</u>	x		-	-	x	-		x	x	x	
<u>Anaheim</u>	x				x	-		x	x	x	
<u>Brea</u>	x				x	-		x	x	x	
<u>Buena Park</u>	x				x	-		x	x	x	
<u>Costa Mesa</u>	x				x	-		x	x	x	
<u>Cypress</u>	x				x	-		x	x	x	
<u>Dana Point</u>	x				x	-		x	x	x	
<u>Fountain Valley</u>	x			-	x			x	x	x	
<u>Fullerton</u>	x		-		x	-		x	x	x	
<u>Garden Grove</u>	x				x	-		x	x	x	
<u>Huntington Beach</u>	x				x	-		x	x	x	
<u>Irvine</u>	x	-			x	-		x	x	x	
<u>La Habra</u>	x	-			x	-		x	x	x	
<u>La Palma</u>	x				x	-		x	x	x	
<u>Laguna Beach</u>	x				x	-		x	x	x	
<u>Laguna Hills</u>	x			-	x	-		x	x	x	
<u>Laguna Niguel</u>	x			-	x	-		x	x	x	
<u>Laguna Woods</u>	x	-			x	-		x	x	x	
<u>Lake Forest</u>	x			-	x	-		x	x	x	
<u>Los Alamitos</u>	x	-		-	x	-		x	x	x	
<u>Mission Viejo</u>	x				x	-		x	x	x	
<u>Newport Beach</u>	x	-			x	-		x	x	x	
<u>Orange</u>	x				x	-		x	x	x	
<u>Placentia</u>	x				x	-		x	x	x	
<u>Rancho Santa Margarita</u>	x				x	-		x	x	x	
<u>San Clemente</u>	x				x	-		x	x	x	
<u>San Juan Capistrano</u>	x				x	-		x	x	x	
<u>Santa Ana</u>	x				x	-		x	x	x	
<u>Seal Beach</u>	x	-		-	x	-		x	x	x	
<u>Stanton</u>	x				x	-		x	x	x	
<u>Tustin</u>	x				x	-		x	x	x	
<u>Villa Park</u>	x	-		-	x	-		x	x	x	
<u>Westminster</u>	x				x	-		x	x	x	
<u>Yorba Linda</u>	x				x	-		x	x	x	

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Acronyms Used In This Report

OC = Orange County

GJ = Grand Jury

EEO = Equal Employment Opportunity

EEOC = Federal Equal Employment Opportunities Commission

HR = Human Resources

HRSD = OC Human Resource Services Department (newly recentralized in second half of 2012)

DFEH = State of California Department of Fair Employment and Housing

EPA = Equal Pay Act of 1963

ADEA = Age Discrimination in Employment Act (1990)

ADA = Americans with Disabilities Act (1973)

GINA = Gender Information Non-Discrimination Act (2008)

FEHA = Fair Employment and Housing Act (State of California)

HIV = Human Immunodeficiency Virus

AIDS = Auto Immune Deficiency Virus

AB 1825 = State of California Assembly Bill Number 1825

HRD = Human Resources Department (the decentralized arrangement in place from post-bankruptcy 1994 to mid-2012)

HR = Human Resources

COC = Compliance Oversight Committee comprised of Director of Human Resource Services Department, Director of Internal Audit and County Counsel

OCEA = Orange County Employees' Association

RFP = Request for Proposal (essentially a bidding process)

SIR = Self Insured Retention (reference to the equivalent of a deductible, the amount a City alone must cover prior to level at which Joint Powers Authority Pool participation takes over)

CEO = Orange County's Chief Executive's Officer

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2012-2013

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SUMMARY

CalOptima provides healthcare for one out of three children in Orange County. That's correct!!! One-third of Orange County's children depend on CalOptima for their healthcare needs. In addition, CalOptima is responsible for the healthcare needs of one in five senior citizens and one in seven Orange County residents. It should also be pointed out that the 427,000 plus Members are either United States citizens or documented aliens. Projections for Membership growth in 2014 when the Affordable Health Care Act takes effect are as high as 27% or 540,000 Members.

In spite of many calling CalOptima "the Gold Standard" or a "National Model" for healthcare, political turmoil threatens the organization, jeopardizing its membership's access to quality healthcare and potentially putting the entire entity at risk. Over the last 18 months, CalOptima's leadership team has been decimated by the departure of 16 senior level executives, including the Chief Executive Officer (CEO), Chief Operations Officer (COO), Chief Medical Officer (CMO) and Chief Financial Officer (CFO). Its Board of Directors have experienced unprecedented turnover to the point that the most tenured Board member has only 20 months experience. The organization has been riddled by internal allegations of misconduct and inappropriate actions. Multiple Board members have been publicly accused of conflict of interest or other misdeeds. In all, the organization has spent more than \$520,000 on outside law firms and consumed countless hours of staff time investigating these allegations.

According to the former CEO, CalOptima is a complicated \$1.5 billion entity with a large member base, numerous regulations and challenging funding sources. When California's budget crisis is added to the mix and with anticipated growth, grappling for slices of the forthcoming \$2 billion pie will be fierce. Although the State sets the rates, CalOptima dictates to the Providers (hospitals, doctors, community clinics, etc.) what is required to retain or grow their slice. It has been a leader in incentivizing physicians to reduce the cost of patient care (example: utilizing surgical centers instead of hospitals) and improve their overall quality of care. However, an ordinance change in December, 2011 by Orange County's Board of Supervisors has made it possible for Providers to seize control of CalOptima's Board of Directors from Member organizations and their representatives. One Supervisor voting against the ordinance change was quoted as saying the proposal gave that individual "heartburn", while another dissenter was quoted, "It's like having the foxes watch the chicken coop."

There is only speculation regarding the future of CalOptima and its Members. Some of those interviewed believe that having for-profit Providers included in or potentially controlling all decisions, is bad news for Members and Member

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organizations. Others interviewed believe CalOptima's \$150 million reserves and ownership of a \$40-\$50 million building are attractive to several of the County's Board of Supervisors professing a budget crisis locally. Although there would certainly be debate and scrutiny from the California State Legislature, those funds could become discretionary for the Board of Supervisors.

Without CalOptima, the most likely scenario for Orange County would be a Geographic Managed Care system; the model used by San Diego County. In that scenario, insurance companies such as HealthNet, Blue Cross, Molina or Aetna would control healthcare for the County's neediest. Nationally, those firms have already begun positioning for 2014. Aetna, a large provider of commercial and individual health care plans, merged with Coventry Health Care in August, 2012 in a deal targeting Coventry's Medicare and Medicaid customers. "Expect other companies with government exposure to see greater investor interest," wrote a Credit Suisse analyst to his clients recently.

REASON FOR STUDY

This is a study by the 2012 - 2013 Orange County Grand Jury into why an award-winning and highly acclaimed public agency appears to be imploding. The goal is to determine what caused the turmoil, who will ultimately benefit and will the 427,000 Orange County residents that currently depend on state and federal aid for their healthcare needs be the biggest losers.

METHOD OF INVESTIGATION

Methods of investigation for this study were:

1. Interviewed employees, past employees, CalOptima Board members, past Board members, Provider representatives and Member organization representatives.
2. Reviewed various documents including confidential documents as well as investigation reports, email communication and letters.
3. Reviewed minutes and transcripts of relevant Board of Supervisors and CalOptima Board of Directors' meetings.
4. Reviewed newspaper and online media accounts of material allegedly leaked to the media following or during CalOptima Board of Directors' closed sessions.

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5. Listened to presentations made by County personnel regarding CalOptima to the current Grand Jury.
6. Attended CalOptima's regularly scheduled and special Board meetings.
7. Attended Board of Supervisors regularly scheduled meetings and heard first hand Supervisors' comments regarding CalOptima.
8. Reviewed County ordinances pertaining to CalOptima.

BACKGROUND AND FACTS

CalOptima is not well known to the general public. Most know it by the label Medi-Cal (California's Medicaid label) since the majority of Members qualify for Medi-Cal services. It is the only plan responsible for administering Medi-Cal in Orange County. In addition to serving low income families, CalOptima provides publicly funded health coverage for 20% of the County's seniors and people with disabilities and receives federal funding under Medicare programs. In fact, CalOptima's One Care program serves almost 14,000 County residents who qualify for both Medi-Cal and Medicare coverage.

CalOptima is a County Organized Health System, a public agency authorized by county, state and federal actions. Although it's funded by state and federal government, it operates independently under a Board of Directors appointed by the County's Board of Supervisors. Under this structure, Orange County is not responsible for CalOptima's financial, legal or program obligations.

CalOptima, a dba for the Orange County Health Authority, was created in 1993 by a County ordinance and began operations in 1995. Prior to then, Orange County's Medi-Cal system operated on a fee-for-service basis. Medi-Cal beneficiaries (Members) would seek out willing Providers who received payment directly from the State after registering with it. The problem with this model was Providers had an incentive to do more, such as ordering unnecessary tests, prescribing unnecessary drugs, etc., so they got paid more; ultimately costing taxpayers more money. Eventually, payment delays and other issues caused the Provider network to dwindle, so California's State Legislature decided healthcare could be better managed closer to all involved and gave counties the authority to select a health plan better suited to their constituents.

In a report by the Institute of Medicine, *Better Care at Lower Cost*, the arm of the National Academy of Sciences estimated \$765 billion per year is wasted on U.S. healthcare. They broke down that figure as follows:

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Unneeded Services	\$210 billion	27%
Excess Administrative Fees	\$190 billion	25%
Mistakes	\$130 billion	17%
Artificially High Prices	\$105 billion	14%
Fraud	\$75 billion	10%
Missed Prevention	\$55 billion	7%

The federal government is the largest purchaser of health care services in the United States. In 1980 healthcare accounted for 11% of federal spending. In 2011, it accounted for 27%.

Currently California has three managed care models serving 4.3 million beneficiaries while 3.3 million remain in a fee-for-service arrangement. The three managed care models include Geographic Managed Care, where the state contracts with various commercial plans (large insurance companies); the Two Plan, in which the state contracts with a local public plan and a commercial plan; and the County Organized Health System model, where the State contracts with a local public plan. Los Angeles County has the Two Plan and designated HealthNet as the commercial plan. San Diego County implemented Geographic Managed Care, designating Molina and HealthNet as their commercial plans. Neither County has received the high praise or tangible awards for quality given to Orange County’s plan by public officials at all levels, the media and Member support organizations.

CalOptima has been considered a national model and the gold standard for county healthcare. In a Board of Directors’ meeting minutes, one current Board member is quoted as saying they received unsolicited praise for CalOptima from the Director of California’s Department of Health Care Services. Over the years the organization has been named multiple times one of the *Best Places to Work in Orange County* by the Orange County Register (2009, 2010, 2011), Orange County Business Journal (2009, 2011), OC Metro (2009) and Modern Healthcare (2010), a national publication. The CalOptima One Care HMO has a four star rating (as of 10/31/12), the highest quality score for a plan in the State of California.

The following represents a timeline of significant CalOptima events from Fall, 2010 to the present. These events have been documented and are a matter of public record. Other than the conclusions made in this Report’s Findings

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section, no other conclusions have been drawn at this time from the following sequence of events.

- 2010 CalOptima received three stars from the National Committee for Quality Assurance, a commendation which was considered exceptional.
- Jan 2011 A CalOptima lawyer made more than 100 allegations against CalOptima's senior executives prompting the CalOptima Board of Directors to commission an outside legal firm to conduct an investigation.
- March 2011 The existing Orange County Supervisor sitting on CalOptima's Board was replaced by a different Supervisor.
- March 2011 A registered lobbyist in Orange County and Los Angeles County helped rewrite the Orange County ordinance to change the make-up of CalOptima's Board, giving more control to Providers and less to Members and organizations representing Members. This was in spite of recent studies showing Medicare and Medicaid fraud perpetrated by clinics, doctors, pharmacists and other medical Providers had spiked in recent years, reaching \$60-\$75 billion a year nationwide. The proposal also included a standing Board position for the Supervisor whose District contained the most CalOptima members. The registered lobbyist also received final approval of the new ordinance language. CalOptima's Board Chairman opposed changes to the language. An email trail exists between a CalOptima lawyer and Deputy County Counsel documenting the involvement of the registered lobbyist organization.
- July 2011 Exodus of 16 senior level managers begins.
- Aug 2011 The Supervisor sitting on the CalOptima Board reported on a trip taken with CalOptima executives to Washington, D.C. and said that Orange County's D.C. delegation praised CalOptima and "recognized the value of CalOptima's model of providing Members access to care in an effective and efficient manner." This is documented in Cal Optima's Board minutes.
- Sept 2011 The Cal Optima Board approved a CEO bonus of 20% (7/1/10-6/30/11) in a closed session and the fact was leaked to the media. The leak also cited 12 other executives that received bonuses.

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- Nov 2011 The Outside law firm hired to do an independent investigation gave its report to the CalOptima Board on November 3. The report stated none of the CalOptima lawyer's allegations were founded and that he retracted over 50 allegations prior to any executive interviews. The report listed several procedures and policies requiring improvement. The outside law firm retained a health care management expert to "offer insight from a management perspective."
- Nov 2011 The healthcare expert wrote a letter with his findings and recommendations to the outside law firm's President and it was included as a supplement to the law firm's report. However, the healthcare expert's letter was apparently leaked to the media. Since it was reported out of context, it portrayed the executive management team of CalOptima as inept. The Grand Jury has the letter. A high ranking executive from the registered lobbyist sent an email to CalOptima's CEO and Board Chairman saying, "If what was in the article is correctly reported, then whoever did the CalO (registered lobbyist's nickname for CalOptima) review was unqualified and issued some irresponsible findings."
- Nov 2011 On November 9, the same CalOptima lawyer brought additional allegations to the CalOptima Board. This time the allegations were regarding the CEO approving the bonuses for 12 other executives. The CalOptima Board retained the same law firm to investigate the new allegations.
- Dec 2011 The Orange County Board of Supervisors passed an ordinance changing the structure of CalOptima's Board of Directors. The new ordinance provided two additional Board seats and changed the structure and made it possible for more Providers to qualify for the 11 seats. One dissenting Supervisor is quoted as saying, the proposal gives that individual "heartburn" while another Supervisor says, "It's like having the foxes watch the chicken coop." This individual also criticized the Supervisor championing the ordinance change for having County Counsel make the proposal instead of them. "It's not how the Board does business; to try to use staff as a proxy," said the Supervisor. Instead of including a CalOptima Board seat for the Supervisor with the most members in their District, they extended the current Supervisor's seat for another year. According to the Agenda Staff Report (ASR) that recommended the ordinance change, Staff claimed this new Board make-up would reduce potential for conflict of interest. The media also reported the Supervisor

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championing the new ordinance received too many complaints about CalOptima; however, CalOptima's statistics uncovered only five in the previous four months.

- Jan 2011 A senior executive from the registered lobbyist organization wrote in a Payers and Providers newsletter, "It is true that doctors and hospitals have not always agreed with the policies and practices of CalOptima. Many, including [registered lobbyist organization's name], supported the successful recent efforts to expand and restructure its governing board." The Grand Jury has a copy of the newsletter.
- Feb 2012 An anonymous letter was faxed to the media, selected Providers and selected CalOptima Board members alleging conflict of interest against its Board Chairman and another Board member. The Board Chairman was accused of using his position to benefit his company in an effort to help Managed System of Care secure a Center for Medicare & Medicaid Innovation grant.
- Feb 2012 Two months after the ordinance change, the registered lobbyist organization held a \$250 per plate fund raiser for the Supervisor sitting on the CalOptima Board. This event was hosted at the home of the CEO of a for-profit hospital.
- Mar 2012 Wanting to clear his name, the CalOptima Board Chairman requested an investigation. The CalOptima Board approved (8-0 vote, with three absent) a different outside law firm to look into the legality of the allegations made against the Board Chairman and three other Board members. (This was documented in the March 23, 2012 Board minutes and confirmed by interviews.) The law firm was never hired since while preparing to sign the agreement, the Interim CEO received a call from a Board member instructing him not to sign it because he did not understand the Board's decision. The Board's decision to hire the law firm morphed into an internal compliance investigation released in September 2012 and concluded that two past Board Chairmen owed CalOptima a combined total of \$90,321.
- April 2012 The CEO resigned and took the position as President of a large healthcare organization.

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- May 2012 The CalOptima Board Chairman was removed from the Board during a Special Meeting of which neither he nor the other Board member mentioned in the anonymous letter was notified. He was later reinstated, but not as Chairman. The Director of the Orange County Health Care Agency was named CalOptima Chairman of the Board. The CEO of St. Jude Medical Center was named Vice-Chair.
- June 2012 According to interviews, a CalOptima employee resigned without another job after receiving a text from a newspaper reporter at 5:36 p.m. citing information discussed in a closed Board session that ended at 5:16 p.m. Months later, this employee was hired by the former CEO's firm.
- July 2012 Now reinstated, the former CalOptima Board Chairman sent a letter to the Board of Supervisors' Chairman resigning from the CalOptima Board. In the letter, another CalOptima Board member is referenced as the "subject of multiple compliance complaints" and of "delaying or completely halting the inquiry into [his] alleged wrongdoings." The Grand Jury has reviewed the letter.
- Aug 2012 The current Interim CEO, formerly the CFO, resigned from CalOptima and took a position with another county's County Organized Health System. The reason given was his long commute, but interviews substantiate that CalOptima had become "an unsafe environment for senior executives."
- Aug 2012 The CalOptima Board called a Special Meeting on a day the Interim CEO was off and a former County employee was named Interim COO.
- Aug 2012 During a meeting of the Board of Supervisors, the Supervisor sitting on the CalOptima Board responded to a public comment regarding CalOptima in what one publication's headline read, *[Supervisor] Blames Former CalOptima Executives for Agency's Brain Drain*.
- Sept 2012 At a CalOptima Board meeting, the Vice Chair reported CEO candidates had removed their names from consideration.
- Sept. 2012 Based on the results of the previously mentioned internal compliance investigation, the CalOptima Board instructed the Compliance Director to send letters to two former Board Chairmen requesting a total reimbursement of \$90,321 for unauthorized use of CalOptima employees and resources.

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NEW FACTS UNCOVERED DURING INVESTIGATION

1. A trail of correspondence between a CalOptima lawyer and an Orange County Deputy Counsel confirmed that a representative from a registered lobbyist helped author the proposed ordinance change (approved by the Board of Supervisors (3-2 vote) on December 6, 2011) that potentially gave Providers control of CalOptima's Board and had final approval of its language.
2. In January, 2011, a CalOptima lawyer submitted a report to the Board of Directors with over 100 allegations against senior management, who in turn commissioned an outside law firm to investigate. The objective of the investigation was to determine if any of the issues raised by him and another in-house CalOptima lawyer involved violations of the law or failure on the part of a CalOptima executive to follow proper and required legal procedures in the specific areas identified. The firm's final report, never seen by CalOptima staff, concluded that "most of the concerns lacked sufficient supporting evidence, were directly contradicted by documents produced by [CalOptima lawyer's name] and/or were determined to be non-issues. In fact, [CalOptima lawyer's name] withdrew more than 50% of his initial claims before we met with a single member of the executive team." The report added that "[CalOptima lawyer's title] and another in-house lawyer had done a poor job of interacting with the executive team." The report concluded by stating, "We uncovered no flagrant misconduct by any CalOptima executive, no gifts of public funds and no conduct that exposes CalOptima to immediate significant liability to regulators or third parties." They cited an interview with CalOptima's financial auditor, who confirmed that it had not found any material misstatements or significant issues regarding CalOptima's financial records for the most recent fiscal year. In the firm's final recommendations, they stated, "Our investigation did reveal that there are some operational and structural problems that need to be corrected at CalOptima. To a person, the executives say they recognize these problems, were aware of most of them and want to fix them." As part of the report, the law firm solicited "the perspective of an experienced healthcare business executive to make sure the Board received a balanced view of the issues and that our recommendations for resolution of the problems identified were practical and workable from an executive standpoint."

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3. Aside from the law firm's internal staff, CalOptima Board members were the only individuals allowed to view the report. However, a portion of the healthcare expert's letter, printed in its entirety in the Appendix of the law firm's final report, was apparently leaked to the media. Since it was not in the context of the full report, CalOptima's senior executives were portrayed as inept. A paragraph missing from the media's version or not reported by the media stated, "It is clear from its inception in 1994 that CalOptima has grown in significant ways and stands as a unique national model for organizing and administering healthcare financial resources to optimize the delivery of care to citizens of Orange County."
4. Following the CalOptima Board of Directors approving a CEO bonus in a closed session, someone apparently leaked the decision to the media along with the fact the CEO authorized bonuses for 12 other CalOptima executives. Six days after submitting their final report, the law firm hired to investigate the CalOptima lawyer's initial allegations was once again commissioned to investigate their new allegations regarding executive incentive compensation. According to the new final report, the CalOptima lawyer sent an email to the lead investigator citing six allegations in connection with the payment of incentive compensation to senior executives for the 2010/2011 fiscal year. In their findings, the law firm stated that, "contrary to [CalOptima lawyer's name] allegations, there was no gift of public funds, no misrepresentations to the Board, no breach of fiduciary responsibility and no self dealing." The report also said the CEO had been delegated the authority to pay incentive compensation to CalOptima executives in a November, 1994 OBAR (CalOptima Board Action Referral—original name was Optima). The findings and facts portion of the report stated, "What is surprising and disappointing, is that [CalOptima lawyer's name] continues to assert facts which he knew, or should have known, were not true."
5. A copy of the faxed anonymous letter sent February 2012 to the media and selected CalOptima Board members alleging conflict of interest by the then Board Chairman contained unique markings created in the scanning process. Identical markings from another fax sent from the Orange County office of a registered lobbyist conclude the anonymous letter came from the same machine.
6. A Supervisor's response to a public comment during the August 14, 2012 Board of Supervisors meeting and published by the media inaccurately claimed that only nine senior executives had left and that the former CEO and

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COO recruited them after they resigned. In fact, two secured positions at the former CEO's current business. One resigned without a new position after receiving a text from a newspaper reporter at 5:36 p.m. regarding the contents of the CalOptima Board's closed session which adjourned at 5:16 p.m.. Two became principals in the former COO's firm. Additionally, former CalOptima executives interviewed indicated they were never recruited by anyone that had previously left CalOptima. Former senior executives interviewed all claim that if not for the dirty politics perpetrated on CalOptima over the past 18 months, they would still be there. Most are now in highly prestigious positions and earning more income.

7. Representatives from Member organizations indicated they were intimidated by the new CalOptima Board structure and feared losing funding.
8. Determining that two past CalOptima Board Chairmen owe a combined total of \$90,321 for unauthorized use of CalOptima staff and resources is a puzzling conclusion by CalOptima's Board of Directors. The request had all the earmarks of retribution by the retooled Board of Directors against the Chairmen for fervently opposing the ordinance change. Any use of CalOptima staff and resources by the two was in conjunction with Managed System of Care. The CalOptima Board had previously approved \$50,000 of "seed" money to fund the start-up of the Managed System of Care. That sum was matched by the County of Orange Health Care Agency and exceeded by CHOC, Hoag Hospital, Integrated Healthcare Holdings, Inc., Irvine Health Foundation, Kaiser Permanente, Memorial Health Services, Prime Health Care, St. Joseph Health System Foundation, Tenet Health Systems and the University of California, Irvine. Since CalOptima, particularly CalOptima's Members, were the primary beneficiaries, common sense dictates the CEO had authority to assign an individual to assist with securing a \$14 million Center for Medicare and Medicaid Innovation grant and allow the two individuals to use vacant offices and unused conference rooms. The Grand Jury's research indicates these individuals have contributed significantly to CalOptima, their own organizations and society as a whole. Their legacies should not be tarnished by strategic media leaks or anonymous and questionable allegations never publicly refuted. CalOptima Board members are volunteers and receive no stipend for Board meetings or compensation for their many hours of service. The majority of those interviewed believe that having former executives and past CalOptima Board members subjected to smear campaigns and potentially slanderous remarks made during Board of

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Supervisor's meetings is reprehensible and a black mark on Orange County government and politics.

FINDINGS

In accordance with *California Penal Code* Sections §933 and §933.05, the 2012-2013 Orange County Grand Jury requires responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court with a copy to the Grand Jury.

Based on its investigation the Orange County Grand Jury has arrived at seven principle findings as follows:

- F1 A majority of Orange County's five Board of Supervisors have failed to take an active role in preserving an entity playing a vital role in the healthcare needs of the County's young, disabled, low income and senior residents. Sadly, 20 months ago, CalOptima received glowing reviews from Member organizations, politicians and government officials at all levels and was an entity Orange County's residents could be proud of.
- F2 A Board of Supervisors majority permitted an organization that is a registered lobbyist in Orange County and Los Angeles County to not only write a County ordinance, but have final approval of its language.
- F3 Member organizations have expressed fear of retaliation if they do not support certain causes or candidates and the Board of Supervisors majority has not attempted to curtail or dispel these fears.
- F4 A majority of the five Supervisors have allowed CalOptima senior executives, highly qualified individuals who performed their duties with passion and a belief they were making a difference, leave highly specialized positions.
- F5 A CalOptima Board member and two CalOptima lawyers have been disruptive and created an atmosphere that according to current and former CalOptima employees is "unsafe for senior executives."
- F6 Having a single Supervisor on the CalOptima Board lends to a perception of intimidation either real or perceived. County employees are reluctant to vote against a Supervisor.

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- F7 Several current CalOptima Board members and recent hires lack the healthcare experience to understand the complexity of CalOptima as proven by their comments and questions during CalOptima Board meetings.

RECOMMENDATIONS

In accordance with *California Penal Code* Sections §933 and §933.05, the 2012-2013 Orange County Grand Jury requires responses from each agency affected by the Recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation the 2012-2013 Orange County makes the following five recommendations:

- R1 The Board of Directors of CalOptima should include more than one County Supervisor. This would minimize potential conflict of interest and reduce any opportunity for CalOptima to be used for political gain or to advance personal agendas. The entity is larger than OCTA, which currently has all five Supervisors on its Board. (F1, F2, F3, F4, F5, F6)
- R2 Remove County employees from the Board of Directors of CalOptima since they report to the CEO of Orange County who is selected by the Board of Supervisors. (F1, F2, F3, F5, F6)
- R3 In order to attract more qualified individuals to fill vacant positions, offer salaries and incentive packages that are competitive in the healthcare industry. (F7)
- R4 Educate CalOptima's Board of Directors on the agency's role now and in 2014; why it operated effectively as a hybrid between private industry and County agency; its relevance to the County's less fortunate's well-being and healthcare needs and why CalOptima should be free from lobbyists and those who want to use it for political gain. (F2)
- R5 Ensure CalOptima Board members reaffirm their accountability to Members, Member organizations, staff and each other and refrain from leaking closed session details or partial reports to the media. (F5,F7)

REQUIRED RESPONSES

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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 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.

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

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

Responses Required:

Orange County Board of Supervisors: F1, F2, F3, F4, F6

CalOptima Board of Directors: F5, F7

Responses Required:

Orange County Board of Supervisors: R1, R2, R3

CalOptima Board of Directors: R3, R4, R5

To Protect And To Serve

A Look at Tools to Assist Law Enforcement in
Achieving Positive Outcomes with the
Homeless Mentally III



2012-2013

To Protect And To Serve

A Look at Tools to Assist Law Enforcement in Achieving Positive Outcomes with the Homeless Mentally Ill

SUMMARY

“Homelessness is not a crime”: a statement noted in Orange County Police and Sheriff’s Department policy. However, homelessness and mental illness sometimes create a ‘perfect storm’ that requires outside intervention. When that storm occurs, it is usually law enforcement that must deal with the consequences. Officers and Deputy Sheriffs are expected to become on the spot psychologists, counselors, housing assistance experts and general-purpose problem solvers, as well as law enforcers and crime fighters.

*“There has been a shift for field officers from dealing with the disabled to dealing with the mentally ill.”*¹ This paradigm shift has created specific, unique challenges for those who choose to serve us as sworn officers: those who take an oath to support and defend the Constitutions of the United States and of California and promise to protect the rights found in these documents.

Individuals with mental disorders and mental illnesses who are also homeless make up our County’s ‘invisible population;’ invisible most of the time to most of us but not to law enforcement personnel. Law enforcement is tasked with providing service to all members of the community and its challenge is to do so while protecting the rights, dignity and private property of the homeless, who are often in need of special protection and services

REASON FOR STUDY

The tragic death of Kelly Thomas on July 5, 2011 in Fullerton had far flung consequences. Although the impetus for this study is, quite logically, this tragedy, the aftermath of which is that at least four lives were unalterably changed that night and by extension, countless others, this incident is not the focus of the Grand Jury study. Rather, the reason for this study is to explore what kind of training peace officers receive in dealing with the mentally ill and the homeless on our streets, both prior to taking up their duties in the community and in going forward in their careers.

METHOD OF INVESTIGATION

In conducting this study, the Grand Jury

- studied articles;
- researched newspaper articles;
- studied police training manuals;
- studied the Orange County Sheriff’s Department policy manual;
- studied Police Officers Standards and Training basic course materials contained in Learning Domain 37: People with Disabilities;

¹ Interview: former Chief of Police:

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- interviewed city Chiefs of Police;
- interviewed field training Sheriff's Officers;
- interviewed health care professionals both in Orange County and in other counties;
- conducted in-field observations with police officers;
- participated in ride-alongs with sheriff's deputies;
- reviewed training programs specific to working with the mentally ill and
- reviewed former Grand Jury studies.

BACKGROUND AND FACTS

What is mental illness?

"I never woke up one day and said, 'Hey, I want to live a tragic life'."

-Wayne Mellinger²

According to the Substance Abuse and Mental Health Services Administration, twenty percent to twenty-five percent of the homeless population in the United States suffers from some form of severe mental illness. In a 2008 survey performed by the United States Conference of Mayors, twenty-five cities were asked to identify the three major causes of homelessness in their communities. Mental illness was the third largest cause of homelessness for single adults (mentioned by forty-eight percent of cities): with the first cause being lack of employment and thus financial stability leading to poverty and the second being family crisis. For homeless families, mental illness was mentioned by twelve percent of cities as one of the top three causes of homelessness.³

Severe mental illness can be defined as a medical condition that disrupts an individual's ability to carry out essential aspects of daily life, such as self-care and household management. It may also prevent people from forming and maintaining stable relationships or cause people to misinterpret others' guidance and react irrationally. Mental illness is also referred to as "Mental Disorder".⁴ It can take two forms: thought disorder, wherein a person's thought process is disrupted causing that person to experience delusions, hallucinations, and/or irrational fears, or they may exhibit unusual behaviors; or mood disorder, where the person experiences periodic disturbances in mood, concentration, sleep, activity, appetite or social behavior. Mood disorders can be marked by periods of extreme sadness (depression) or excitement (mania) both of which tend to be episodic.⁵

² Wayne Mellinger Ph.D. is a social justice activist living in Santa Barbara and social worker for the homeless. He was appointed by Santa Barbara County 3rd District Supervisor Doreen Farr to the South Coast Homeless Advisory Committee and is a board member of Clergy and Laity United for Economic Justice (CLUE). He is bipolar.

³ *Mental Illness and Homelessness*. The National Coalition for the Homeless. July, 2009:

<http://www.nationalhomeless.org>

⁴ POST L.D.37; ch 4 p.4.4

⁵ POST L.D.37; ch4 p.4.5

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California's Peace Officer Standards and Training (POST) lists indicators that demonstrate behavior related to mental illness. These are: inappropriate behavior, extreme rigidity or inflexibility, excitability, impaired self-care, hallucinations, delusions, disorganized speech, thought patterns or disorientation, clinical depression, bipolar disorder, schizophrenia, postpartum-depression, postpartum-psychosis, posttraumatic stress disorder and personality disorder.⁶

Wayne Mellinger estimates that about half of those living on the street have mental health challenges and about half of these individuals also have substance abuse issues and gives amazing insight into what it is like:

Imagine going through life in sixth gear, sometimes flying smoothly on the interstate of life. Other times this accelerated mode of being leads to reckless driving in which you drive off the road and terribly crash the car. While other people gradually warm up their engines, you often lie in bed at night already awake and raring to go. While raised to be polite and deferential, you constantly find yourself interrupting people and finishing their sentences. You often feel like you have bulldozed your way through an encounter.... You sense that you are all over the place, ideas firing in your head so fast that others cannot keep up.... You even get unrealistic beliefs about what you can accomplish. Sometimes you are involved in "pleasurable sprees" that afterward seem terrifying foolish. Now imagine that you have found something that soothes that excessive energy and calms you down so much that you are actually able to sit quietly and focus for hours on doing some of the things you enjoy. While you know that the substance is unhealthy and illegal, the relief you feel under its influences is so wonderful that you find ways to do it more and more, until you are so involved with the substance that you are chemically dependent... While I come from a loving and caring middle-class family that provided me with everything I needed and ensured that life opportunities would abound, an undercurrent of darkness and chaos has run through my life. Periods of intense creativity, intellectual pursuits and professional accolades get followed by periods of exhaustive depression, isolation and dysfunctionality. These episodes have led me to homelessness several times in my adult life.⁷

⁶ POST L.D.37; ch4 pp.4.5-4.12

⁷ <http://homelessresourcesca.blogspot.com/2012/01for-homeless-mentally-ill-and-addicted...>

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The 2005-2006 Orange County Grand Jury study entitled: *The Homeless Crisis in Orange County*, found that throughout the year there were nearly 35,000 homeless people in Orange County. In 2011, that figure was estimated to be 18,325⁸ based on current HUD⁹ methodology.

The closing of large state-run mental health institutions in the 1970s left many severely mentally ill people with nowhere to go. For those who are holding onto the cliff of life, the wealthiest nation in the world has no safety net to catch those who free fall to the bottom.

Many residents, business owners and government officials continue to view chronic homelessness as a law enforcement issue rather than a social issue.¹⁰ How peace officers respond to persons living with a mental disorder can have tremendous impact on how these encounters will be resolved.

CAUGHT BETWEEN A ROCK AND A HARD PLACE

Law Enforcement:

Even peace officers skilled in dealing with the mentally ill are often caught between a 'rock and a hard place'. On the one hand, they have a duty of care for all citizens, regardless of their mental state and living circumstances; on the other hand, they have an obligation to citizens who own property and conduct business within the community and may interact with the homeless mentally ill.

The County of Orange is "policed" in two main ways: thirteen of the thirty four cities in the County contract with the Orange County Sheriff's Department for their services; the other twenty one cities have their own police departments.

⁸ Galvin, Andrew. Orange County Register, "Volunteers needed for count of homeless" 1.22.2013

⁹ Housing and Urban Development

¹⁰ *The Homeless Crisis in Orange County.2005-2006 Orange County Grand Jury study, p.6*

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Incorporated Cities of Orange County		
City	Sheriff's Dept.	City Police Dept.
Aliso Viejo	X	
Anaheim		X
Brea		X
Buena Park		X
Costa Mesa		X
Cypress		X
Dana Point	X	
Fountain Valley		X
Fullerton		X
Garden Grove		X
Huntington Beach		X
Irvine		X
La Habra		X
La Palma		X
Laguna Beach		X
Laguna Hills	X	
Laguna Niguel	X	
Laguna Woods	X	
Lake Forest	X	
Los Alamitos		X
Mission Viejo	X	
Newport Beach		X
Orange		X
Placentia		X
Rancho Santa Margarita	X	
San Clemente	X	
San Juan Capistrano	X	
Santa Ana		X
Seal Beach		X
Stanton	X	
Tustin		X
Villa Park	X	
Westminster		X
Yorba Linda	X	

An organization that is instrumental in setting policy for all these departments is the Orange County Chiefs' and Sheriffs Association. It is an exclusive non-profit entity that meets regularly to discuss issues and concerns of law enforcement in the County. It is comprised of chief law enforcement executives: city police chiefs and the Sheriff,

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who meet monthly as part of their duties. This practice is very beneficial to public safety because of the enhanced communication and co-operation between these men and women. The Orange County Chiefs' and Sheriffs Association is an effective political force when it speaks with one voice about an issue of concern whether through the media or with politicians at the county, state and federal level.

Individuals interested in becoming peace officers can complete any Police Officers Standards and Training (POST) approved police academy in California to initially qualify to work as a sworn officer in Orange County. However, Orange County itself has three options for initial training: the Sheriff's Academy, Golden West College Criminal Justice Training Center or a program at Fullerton College.

The purpose and scope of the training policy at the Sheriff's Academy is to provide a training program that will ensure its personnel possess the knowledge and skills necessary to provide a professional level of service that meets the needs of the community.¹¹ This training is provided using courses certified by the California Commission on Peace Officer Standards and Training (POST) and the Correctional Standards Authority (CSA)¹². It addresses the following areas:

- Legislative Changes,
- State Mandated Training,
- Critical Issues Training.

In addition to this training, the POST requirement also includes Advanced Officer Training, similar to continuing professional training found in teaching, nursing and the practice of law, consisting of twenty-four hours of training every two years in compliance with the POST requirements. This requirement offers a variety of courses ranging from drug/alcohol recognition to perishable skills such as pursuit driving and firearms accuracy, as well as providing legal updates. It currently does not specify the number of hours for or frequency of on-going training for dealing with citizens with mental illness.

POST basic academy training offers a Learning Domain (thirty-seven) Entitled: *People with Disabilities* that consists of a workbook divided into four chapters designed to provide students with a self-study text that can be used in preparation for classroom training.

- Chapter One covers laws that protect the rights of people with disabilities, types of disabilities and peace officer interactions with people with disabilities.
- Chapter Two covers developmental disabilities.
- Chapter Three covers physical disabilities including neurological disorders and
- Chapter Four covers persons with mental illness.

¹¹ Orange County Sheriff-Coroner Department Policy Manual: Training Policy p.48

¹² Penal Code §13515.25

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The overview to Chapter Four 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.”*¹³ The chapter is thirty pages long and mostly in grid format, sometimes with as little as one paragraph on a page; arguably, not material for an in-depth study of the subject unless heavily supplemented by a knowledgeable and competent instructor.

The Sheriff’s policy for dealing with mentally ill persons is in the Field Operations Manual §29. It defines mentally ill as “those persons who are of such mental condition that they are a danger to themselves or the person or property of others, and in need of supervision, treatment, care or restraint.”¹⁴ The manual then goes on to discuss symptoms of mental illness and physical conditions that look like mental illness. It states: *“Mental illness symptoms only would not be justification for taking a person into custody.”*¹⁵ It also discusses how to talk to a disturbed person.¹⁶ Protocol for dealing with mentally ill individuals includes contacting a Centralized Assessment Team (CAT) or a Psychiatric Evaluation Team (PET) available twenty-four hours a day, seven days a week. It is also possible to contact an Emergency Treatment Services (ETS) facility which is open twenty-four hours a day, seven days a week.

Each city agency and the Sheriff’s Department should supplement POST training to include an in-depth study of dealing with those on the street who are emotionally disturbed and/or mentally ill – both in the context of day to day policing and in the context of use of force. Although many agencies have procedures for dealing with the mentally ill, few actually conduct regular training related to these policies. Even fewer train on tactics and use of force in the context of the emotionally disturbed and the mentally ill. The Grand Jury had the experience of speaking with a top law enforcement officer who believed there were other priorities that needed more attention. However, when interviewed, deputy sheriffs and city patrol officers expressed both a desire and a need for on-going, in-depth training in this area of policing.

Lack of in-depth training in this area can have dire consequences as demonstrated in the case study below, greatly abridged for these purposes:

In *Herrera v Las Vegas Metropolitan Police Department*, 298F.Supp 2d 1043 (District of Nevada 2004), plaintiff brought claims against five metro officers and the sheriff, the Las Vegas Metro Police Department and the city of Las Vegas for

- wrongful death,
- intentional infliction of emotional distress,
- negligence,
- negligent training and supervision.

¹³ POST LD37:chapter 4,p.4-1

¹⁴ Sheriff’s Field Operations Manual §29 p. 29.1

¹⁵ Ibid p.29.4

¹⁶ Ibid p.29.5

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An expert testified that defendant officers should have known that the manner in which they approached the decedent would escalate the confrontation. According to Van Blaircom, the officers' treatment of the situation, combined with their statements that a mentally ill individual should be treated as any other person, regardless of the situation, indicate that the police department's training in dealing with the mentally ill falls well below the reasonable standard of contemporary care.

There needs to be a paradigm shift in traditional police tactics in order to successfully interact with disturbed individuals. This will only happen if there is proper mandatory training of law enforcement personnel.¹⁷

The Grand Jury distributed a questionnaire to the Orange County Sheriff's Department and to every city police department in order to gain an objective understanding of policies and procedures used throughout the County when peace officers encounter the mentally ill homeless - which they do on a daily basis. We also wanted to understand whether departments were taking any creative and innovative approaches when dealing with this area of law enforcement. The questionnaire appears below with responses summarized as succinctly as possible.

Q: How many sworn officers do you have in your Department?

The range of sworn peace officers throughout the County of Orange varies greatly, depending on the size of the city. The least number of officers in a city is twenty-two; the greatest: three hundred forty. There are one thousand seven hundred and sixty-six deputy sheriffs in a total of thirteen cities and unincorporated areas within the County.

The number of officers per one-thousand people in a city ranges from 0.88 to 2.04. Most cities statistically have about one officer per one-thousand persons in the city they serve.

Q: Is your department accredited by a national agency such as the Commission on Accreditation for Law Enforcement Agencies?

Two city police departments are accredited nationally by the Commission on Accreditation for Law Enforcement Agencies (CALEA); nineteen cities and the Sheriff's Department are not. This means that less than ten percent (6.8 percent) of cities within the County of Orange have nationally accredited police departments.

¹⁷ LEMHS CORP, *Law Enforcement Mental Health Solutions* training seminar 02.13.13

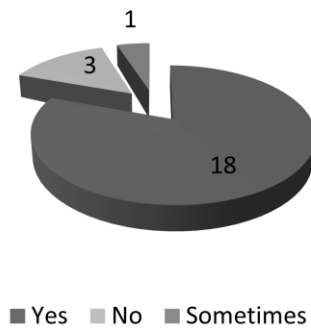
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Q: Beyond Police Academy training, how many hours of training do officers receive each year that specifically focuses on the understanding of mental illness suffered by those on the street?

Hours of Training on Mental Illness	Departments
0	1
1	2
2	3
4	2
5	2
12	1
16	1
1 to 2	1
2 to 4	4
3 to 4	1
4 to 16	1
4 to 8	1
Varies	2

Q: Does this training include presentations by mental health professionals?



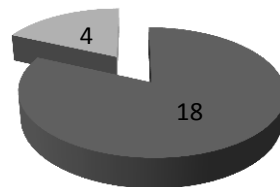
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Q: How many briefings annually are provided to your officers that specifically pertain to the homeless and strategies/tactics for dealing with them?

Annual Briefings	Departments
0	1
1	2
2	1
4	2
1 to 2	2
1 to 3	2
2 to 3	1
2 to 4	1
3 to 4	1
6 to 12	1
9	1
12	1
19	1
Frequently	1
Varies	2
Did not Answer	2

Q: Do you have a specific officer(s) designated to liaison with your city's homeless population (a homeless liaison officer)?



■ Yes ■ No

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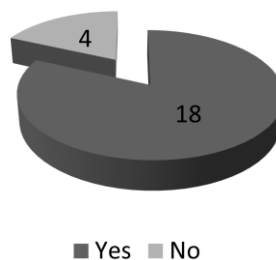
Q. How many officers? If no, how do you deal with this population?

Number of Liaison Officers	Departments
1	7
2	2
3	1
4	2
5	2
8	1
10	1
Handled Differently	6

Some departments are members of the Orange County Community Officer’s Association and, as part of that Association, meet and discuss strategies for dealing with the mentally ill homeless.

In a small city, all officers are familiar with the homeless population. The Grand Jury found this to be true during their ride-along with both the Sheriff’s Department and City Police. Officers knew people by name as well as something of their background and personal issues. In some cases, those on the street also knew the officer - sometimes by name. Other cities and the Sheriff’s Department are currently exploring the designation of a homeless liaison officer. One city said it deals with homeless mentally ill issues on a case-by-case basis.

Q: Do you have at least one officer trained in crisis intervention?



Q: What is your plan when this person(s) is not at work?

Responses vary from no formal plan to some cities having many or even all field officers formally trained in crisis intervention. Four city departments make use of crisis negotiation teams, Psychological Evaluation Teams (PET) and Centralized Assessment Teams (CAT). These teams are from the County’s Behavioral Health Department and are funded in part by the Mental Health Services Act (MHSA). Ten departments responded they had many officers trained in crisis intervention and therefore, the absence of one trained officer is not an issue. Four departments use community

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resources; four have no plan. The Sheriff's Department uses Centralized Assessment Teams and Psychological Evaluation Teams.

Q: If you do not have a dedicated officer(s), what other options are you exploring when dealing with persons suffering from mental illness in crisis?

Two departments did not answer this question; it was irrelevant to twelve others as they have dedicated officers. Other comments included: officers use services of the Orange County Health Care Agency; officers receive training on communication and intervention techniques. One department stated it is currently working with neighboring cities to improve the task force on homeless issues; another department and the Sheriff's Department attend crisis intervention training – a sixteen hour course – at Golden West College. A mental health professional told the Grand Jury that Orange County Health Care Agency offers a forty hour (Memphis Model) course to police departments but departments will not (cannot?) release officers for longer than sixteen hours. One department stated that, if an individual in question can be held on a *Welfare & Institutions Code* §5150,¹⁸ they get that individual to the hospital for a psychiatric evaluation; otherwise there is no procedure or other option available.

Q: What resources and facilities are available to you for use with the homeless mentally ill (other than those designated W&IC §5150)?

There were several responses to this question. All departments use one or more of the strategies discussed below.

One department has access to lists of shelters and assistance programs on their in-car computers. Others have lists of shelters, churches, other non-profits and food banks. Some departments use University of California, Irvine hospital, Hoag Hospital and College Hospital - although it is not clear whether these hospitals are used only for Welfare & Institutions Code §5150 designated individuals. One department has two social workers ride along with an officer one day a week; another has a mental health clinician ride with the homeless liaison officer regularly. Some departments call Centralized Assessment Teams (CAT) and Psychiatric Evaluation Teams (PET) for assistance; one department has an Alternative Sleeping Location (ASL) program. Some departments use Orange County Mental Health Agency resources.

Q: Do your officers have access to a PERT (Psychiatric Emergency Response Team) or PERT-like team 24 hours, 7 days a week? If yes, are you happy with their response? If no, what would you like to see changed?

Twenty-one departments (this number includes the Sheriff's Department) answered that they did have access to some type of psychological assessment/crisis intervention team. One department said they did not. Seventeen departments are happy with this professional partnership. One department was not happy and stated

¹⁸ Section 5150 of the *Welfare & Institutions Code* allows a peace officer to admit an individual to a hospital for a seventy-two hour psychological evaluation if that person meets certain criteria: i.e. are an immediate danger to themselves or others

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such a team needs additional resources; one did not answer the question. Four departments had no comment.

Q: As part of departmental training do your patrol officers periodically ride with the homeless liaison officer(s) in order to further develop their abilities and strategies, first hand, in dealing with the homeless? What other options/training do you utilize to enhance their skill set?

Five departments responded that their patrol officers ride with the homeless liaison officer; seventeen departments do not follow this practice. One department holds post-incident de-briefings. It is not clear whether these de-briefings include only officers involved in the incident or whether all patrol officers are included. Two departments send their officers to Orange County Mental Health briefing training. Three departments use the POST learning portal. One department holds informal briefings and training; one holds monthly CompStat¹⁹ (Computer Statistics) meetings. Three departments use the professional services of community leaders by having them give presentations; for instance, Orange County Mental Health Agency goes to roll call at the Sheriff's Department and the city police departments to remind officers of the importance and availability of Centralized Assessment Teams and Psychiatric Evaluation Teams. Seven departments avail themselves of outside professional courses; nine departments use videos, training bulletins, briefing training, handouts and periodicals. The Sheriff's Department, as well as using some of the strategies above, also uses a sixteen week "Memphis Model" (Crisis Intervention Training) course. Several police departments gave the Grand Jury a copy of the video: *Close Encounters* which teaches positive methods police officers can use when working with the homeless mentally ill in the field. This video can easily be used at roll call.

Q: Do supervisors and command staff periodically ride with the homeless liaison officer(s) so that they are aware of challenges and issues related to that specific population? What other options do you utilize to enhance their decision making skills?

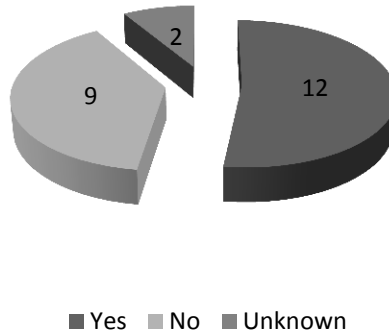
Five departments responded that their patrol officers ride with the homeless liaison officer; seventeen departments do not follow this practice. One department uses a new, internal database; one has a department policy and officer resource guide; one uses post incident de-briefing. In one department, the command staff is part of the homeless task force. Three departments report that they are continually briefed by the homeless liaison officer; three believe attending Chiefs' and Commanders' meetings enhances their skills. Ten departments avail themselves of outside professional training and conferences, as does the Sheriff's Department. Three departments did not answer the question.

¹⁹ CompStat: Name given to accountability process model of crime reduction. This model was developed by the New York Police Department and introduced in Los Angeles CA by Chief Bratton. It is a promising trend in significantly reducing violent crime.

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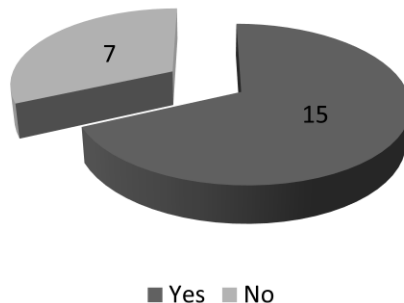
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Q: Has your department reached out to neighboring cities to learn whether specifically skilled officers could be combined into a task force dedicated to dealing with the homeless? If so, what was the response?



The Sheriff's Department is considering a task force dedicated to their contract cities and unincorporated areas. Another department is exploring opportunities for a task force. One department hosted a county-wide meeting of homeless outreach staff. Three departments have their homeless liaison officer(s) meet with others to share information and fifteen to twenty departments are members of the Orange County Officer's Working Group on Homeless and Mental Illness. Other departments work together: Seal Beach partners with Laguna Beach Police Department; Orange, Anaheim and Placentia Police Departments work together. Orange Police Department and Santa Ana Police Departments work together at the Santa Ana Riverbed area where a large homeless population resides.

Q: Has your department reached out to recognized law enforcement, mental health and legal experts to learn whether specifically skilled individuals could be used in your training program? If so, what was the response?



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Three departments use Orange County Mental Health Agency services. Other responses include: creating a four hour workshop for First Responders; developing a homeless task -force; co-hosting “Meeting of Minds” conference with Orange County Mental Health Agency; adding POST certified content to on-going training curriculum; having the community resource officer meet with others in the County, and using college programs for on-going education.

Q: If you were offered a complete program for training your officers in positive and effective interaction with mentally ill individuals would you avail yourself of the opportunity?

Twenty-one departments (including the Sheriff’s Department) are interested in on-going multidisciplinary training programs. Three departments have already completed such a program; others, including the Sheriff’s Department, are in the process of completing training. One department commented that their interest was subject to review of their needs and the cost of the program.

Q: Do you think the County should support additional training through the use of MHSA (Proposition 63) funds? If no, why not?

All police departments believe the County of Orange should use Mental Health Services Act (Proposition 63) funds for additional peace officer training. In fact, the Grand Jury was told that funding is available to local law enforcement for a comprehensive forty hour Crisis Intervention Training (CIT) program.²⁰ Some departments rejected this proposal as too difficult to implement due to the projected cost of overtime necessary to backfill the work schedule for patrol officers attending the weeklong training.²¹ The Grand Jury was told that the “push back” against the proposed CIT training happened before the Kelly Thomas incident.²² As per the responses to the previous question, a few departments have, in fact, completed this training and a few others plus the Sheriff’s Department (which equals thirteen cities) are in the process of doing so. A mental health professional told the Grand Jury that Orange County would fund CIT training with Proposition 63 funds if “local law enforcement changed their position.”²³ This individual said: “CIT is the First Line of Defense. The PERT is the Second Line of Defense.”²⁴ Orange County Health Care Agency has, in 2012, provided crisis intervention training to two hundred ninety-eight sworn officers. Another program has provided training to approximately two hundred officers.

Only one department commented on this question. The comment was that revenue from Mental Health Services Act (Prop. 63) in Orange County should be returned to the County.

²⁰ Interview: Orange County mental health professional: 3.14.13

²¹ Ibid

²² Ibid

²³ Ibid

²⁴ Ibid

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Q: Would you consider establishing a database maintaining information on your city's homeless population in order to make such information available to all officers in the field? If no, why not?

Seventeen departments, including the Sheriff's Department, said yes to this question; four said no. Concerns expressed in establishing a database include potential legal and Health Insurance Portability and Accountability Act (HIPAA) issues. One department is in the process of establishing a database. One department noted it should be a County maintained database because of the transient nature of the homeless population. To that end, the Grand Jury learned from an officer that the County manages a database called *Homeless Management Information Systems* (HMIS). However, the existence of this data base doesn't seem to be well known throughout the County. One department pointed out that there needs to be specific guidelines as to what is contained in the database and who has access to it.

Subsequent to the Kelly Thomas incident, the City of Fullerton directed the Los Angeles Office of Independent Review to conduct a systematic review of the Fullerton Police Department.²⁵ The president of the Los Angeles Office of Independent Review conducted numerous internal affairs investigations and his findings were presented to the Fullerton City Council. One of the positives he points to in his report is the Police Department's pro-active efforts in undertaking a "census" of its homeless population in which information gathered will be inputted into a database available to all Fullerton police officers in the field.²⁶ Although there are legitimate privacy concerns in establishing a database, there are creative ways of going about it that do not impact an individual's civil rights. This information could give officers insight into a person's behavior so that the officer is able to choose the most appropriate intervention techniques. Such a database could become an invaluable tool.

Q..What are your Department policy and procedures for dealing with those with mental illness?

Lexipol Policy 418²⁷ describes an officer's duties when a person is to be committed to a mental health unit pursuant to *Welfare and Institutions Code* §5150²⁸ The policy does not specifically address procedures or offer any insight into how an officer should proceed when he or she, in the course of their duties, comes in contact with a mentally ill homeless person.

²⁵ OIR Group. *Report to the City of Fullerton: Systemic Review of the Fullerton Police Department*, August 2012

²⁶ Ibid p.8

²⁷ The Lexipol Law Enforcement Policy Manual has more than 140 policies based on federal and state laws. The policy manual is written by legal and law enforcement professionals who constantly monitor major court decisions, legislation and emerging trends affecting law enforcement operations. Lexipol provides regular updates in response to legislative mandates, case law and the evolution of law enforcement best practices.

²⁸ Ibid §418.2: *AUTHORITY: When any person, as a result of mental disorder, is a danger to others, or to himself or herself...a peace officer...may...take, or cause to be taken, the person into custody and place him or her in a facility...for 72 hour treatment and evaluation.*

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Seventeen departments enclosed a copy of Policy 418 when returning the questionnaire; five departments enclosed copies of procedures based on Policy 418, which were customized to the specifics which impact their city. One department noted that its city had created a task force “to address challenges caused by the city’s homeless population.” This task force has brought together diverse members of the community, including the police department, and made nine recommendations which were then adopted by the City Council. This department spells out in Police Policy §1420.1: Protocol, that the Orange County Chiefs of Police and Sheriff’s Association has agreed to follow by contacting a Centralized Assessment Team (CAT) or Psychiatric Evaluation and (Response)Team (PE[R]T) for response to the field. The policy specifies that a Centralized Assessment Team (CAT) should be called any time an officer needs a clinical intervention that may or may not lead to a §5150 commitment.

Another department has incorporated into Policy 418 considerations an officer should utilize when handling a call involving a mentally ill individual, including:

- use of available information to determine the nature of the mental illness;
- conflict resolution and de-escalation techniques;
- appropriate language and
- available community resources.

One department spells out in their General Order how an officer will recognize mental illness and lists intervention strategies using the acronym **TACT**: Time; Atmosphere; Communication; Tone. The acronym is a good one and worth exploring, as private citizens can utilize these strategies as well as law enforcement.

Time: Police officers traditionally are expected to ‘wrap things up’ as soon as possible in order to take the next call for service. This practice is counter-productive when dealing with the mentally ill. If you hurry, you bring a sense of energy to the encounter that conveys to the individual that you are not interested in them.²⁹ A better approach for an officer to take is to slow the situation down, assess the problem and give the person time to process information. Take time to plan. This approach may take time but a positive outcome makes it worthwhile.

Atmosphere: Keep the scene calm and controlled. Move slowly and allow for personal space and for the individual to pace, if possible.³⁰

Communication: Build rapport with the individual and speak calmly and slowly. Repeat yourself and help the person feel safe. Use active listening and tell the individual what you are going to do before you do it.³¹

²⁹ LEMHS CORP, 2012. *Law Enforcement Mental Health Solutions* pp. 13-14

³⁰ Ibid

³¹ Ibid

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Tone: Build a relationship of trust. Be calm, firm, respectful, patient, truthful and reassuring. In this way, you can control the situation.³²

Depending on the officer's observations of the individual, there are five different procedures an officer can choose to follow. There is also a section on dealing with juveniles which includes three other options.

Several departments provided the Grand Jury with copies of training bulletins designed to teach officers positive intervention techniques, some using the TACT model. Other departments have specific protocols regarding Centralized Assessment Teams (CAT) and Psychiatric Evaluation Teams (PET) tailored to their departments.

One department has an extensive training bulletin that covers how to recognize and respond to Alzheimer's victims, as well as mental illness; another on how to deal with suicide attempts.

Another department has extensive policies on mental illness commitments, including the use of evaluation teams; juveniles and the responsibilities of the detaining officer and dealing with the emotionally disturbed and mentally ill.

What is your Department policy on mandatory continuing education for sworn officers in the area of understanding and working with mental illness in your community?

Initial training for peace officers is provided in the Police Academy and is a foundation designed to be built upon. Officers have a three-day block of specific training. About two hours each day covers: mental disorders, medication and rapport building. Following the classroom training, officers spend two days on the street with a trained, supervising officer.³³

The following summarizes the initial training provided to prospective police officers.

POST Field Training Guide: Mentally Ill

The trainee is expected to:

- Review and explain policy regarding the handcuffing of a mentally ill person;
- Explain how to properly book a mentally ill person;
- Recognize and demonstrate effective communication skills to be used with cognitively impaired persons;
- Explain how non-compliance may not be a sign of defiance or disrespect;
- Explain and demonstrate safeguards including the TACT model;
- Explain state law and agency policies regarding those with mental illness;

³² Ibid

³³ Interviews

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- Identify points to consider when dealing with mentally ill persons including, among others, ignoring verbal abuse;
- Be able to identify the appropriate mental health facility for an individual;
- Understand and explain criteria for *Welfare & Institutions Code* §5150;
- Know and discuss alternative methods for handling a situation that will not result in a §5150 commitment.

Continuing education is mandated under California *Penal Code* §13515.25 and states in part:

*“... the Commission on Peace Officer Standards and Training shall establish and keep updated a continuing education classroom training course relating to law enforcement interaction with mentally disabled persons. The training course shall be developed by the commission in consultation with appropriate community, local and state organizations and agencies that have expertise in the area of mental illness and developmental disability, and with appropriate consumer and family groups. In developing the course, the committee shall also examine existing courses certified by the commission that relate to mentally disabled persons. The commission shall make the course available to law enforcement agencies in California. The course... shall consist of classroom instruction and shall utilize interactive training methods to ensure that the training is as realistic as possible...”*³⁴

The Penal Code then concludes with part (d) *“The Legislature encourages law enforcement agencies to include the course created in this section, and any other course certified by the commission relating to mentally disabled persons, as part of their advanced officer training program.”*³⁵ Advanced officer training consists of twenty-four hours of training every two years in compliance with POST requirements, but, because there are other competing subjects offered, some of which are mandatory, there is no mandated time requirement specifically dedicated to training in field encounters with the mentally ill.

Sixteen departments forwarded a copy of Policy 418, which includes §418.6 and references *Penal Code* §13515.25.

Six departments provided information on how *Penal Code* §13515.25 has been implemented. One department ensures all personnel receive refresher training at least once every three years and that this training is documented. Another department holds a conference specifically geared to on-going education that meets POST certified curriculum content. One department has specific training during orientation on dealing with persons with mental disabilities. The training is up-dated every three years and

³⁴ California Penal Code §13515.25

³⁵ Ibid

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developed in collaboration with mental health partners. It is documented on a mental illness awareness form. Another department offers an eight-hour course on *Penal Code §13515.25* specifically on responses to mental disabilities. Other departments are sending their officers to one of the available courses or workshops.

The Grand Jury is aware of at least four continuing education programs in Orange County that offer comprehensive and multi-faceted, in-depth training on dealing with mental illness on the street and in the community at large. One of these programs offers college credit through California State University Fullerton. The bigger issue seems to be how to free-up patrol officers – especially those serving small communities - to get them into these programs. Patrol shifts must be staffed twenty-four hours, seven days a week to ensure public safety. Most departments have minimum staffing levels usually set by evaluating calls for service, by time of day, day of the week and other factors. Thus, training can be costly. Although it may not be a simple task, the Grand Jury believes there are creative solutions out there that would make this goal achievable.

A CASE FOR LAURA'S LAW

Laura's Law may be a tool that can be used to help both law enforcement and the private citizen.

Laura's Law, also known as Assisted Outpatient Treatment (AOT), is a process that allows courts to compel individuals with severe mental illness and a past history of multiple hospitalizations, arrest and/or violence due to mental illness to receive treatment. It commits the Mental Health system to providing treatment. To date, Nevada County and Los Angeles County are the only counties in California to implement the program.

Laura's Law rose out of a tragedy in Nevada County, California where nineteen year- old Laura Wilcox was one of three people killed by a severely mentally ill patient who refused medication to control his delusions.

When Laura's Law was implemented in Nevada County,

- mental health hospitalization was reduced forty-six percent,
- incarceration was reduced sixty-five percent,
- homelessness was reduced sixty-one percent and
- emergency contacts were reduced forty-four percent.

Nevada County claims they saved \$1.81 - \$2.52 for every \$1.00 spent, as a result of reducing incarceration, arrest and hospitalization.³⁶

³⁶ Heggarty, Michael, Nevada County Behavioral Health Director. *The Nevada County Experience* Nov.15, 2011

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Los Angeles County implemented Laura's Law, with some modifications, eight years ago. Because Los Angeles County is one of our nearest neighbors, the Grand Jury went to the Los Angeles Department of Mental Health to understand how the program is working. We were told there is a "thicket of regulations to make the law unworkable."³⁷

A mental health professional told the Grand Jury that Laura's Law, as it stands, has no "teeth" in it. The "teeth" are in the implementation – not the law.³⁸ Los Angeles has implemented the program as a diversion program, used in lieu of legal action against an individual or detainment in a locked setting. Therefore, the court is essentially 'incentivizing' an individual. People agree to be medicated because they see it ultimately as in their own best interests.

The Los Angeles program is two-fold: first, it is a diversion program. With the implementation of AB109 (also called "Realignment Legislation"), more and more individuals are being remanded to County custody rather than state prison, thus further impacting the already bursting jails.³⁹ There is, therefore, an incentive both for the courts as well as for those with mental illness not to be incarcerated. For the individual, the tradeoff for taking medication means: no arrest record and not being subjected to jail and jail in-take procedures. Secondly, the courts offer the program to the 'best' people; meaning those who will benefit most from the program.⁴⁰ These are individuals who are very stable on medication but stop taking it for one reason or another. The bottom line for these people is that as long as they participate in the program, they are not locked up.

Los Angeles County has implemented the program with impressive results. Overall costs for this patient population decreased by an estimated forty percent due to:

- reduction in days of incarceration: seventy-eight percent;
- reduction in days of hospitalization: eighty-six percent.

New York found that Assisted Outpatient Treatment (Kendra's Law) kept the public, patients and law enforcement safer by:

- reducing physical harm to others forty-seven percent;
- reducing arrests eighty-three percent;
- reducing incarceration eighty-seven percent and
- reducing hospitalization seventy-seven percent⁴¹

³⁷ Interview, mental health professional. 2.7.13

³⁸ Ibid

³⁹ In order to be counted as an AB109 inmate, the offense for which the inmate is incarcerated must be a non-serious, non-violent, and non-sex-register felony with no prior such convictions. These offenders are referred to as "non-non-non." *Unforeseen Consequences and Impacts – AB 109 Realignment – Orange County Sheriff's Department presented by Lieutenant Mike McHenry*

⁴⁰ Ibid

⁴¹ Laura's Law fact sheet: Mental Illness Policy Org. <http://lauras-law.org/states/california/lauraslawfactsheet.html>

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Only a very small group of severely mentally ill patients – well known to law enforcement - are eligible under Laura’s Law. They must be individuals who are repeatedly arrested or hospitalized due to their failure to stay in treatment. Eligible individuals must have a history of non-compliance with treatment that has been a significant factor in being hospitalized, or incarcerated at least twice within the last thirty-six months, or resulted in one or more acts, attempts or threats of serious violent behavior within the last forty eight months.

California State Law requires the disclosure of substantial oral and written information to psychiatric patients before they can be offered anti-psychotic medication.⁴²

Welfare and Institutions Codes §5325.2 states: “Any person who is subject to detention pursuant to §5150, 5250, 5260 or 5270.15 shall have the right to refuse treatment with antipsychotic medication subject to provisions set forth....”

Section 5332 states: (b) “if any person...refuses treatment with that medication, the medication shall be administered only when treatment staff have considered and determined that treatment alternatives to involuntary medication are unlikely to meet the needs of the patient and upon determination of that person’s incapacity to refuse the treatment, in a hearing held for that purpose.”⁴³

New York City introduced Kendra’s Law (the model for Laura’s Law) over fifteen years ago. Because of its success, it was taken statewide over ten years ago. A study in *Psychiatric Services* found the odds of arrest for a violent offense were almost ten times (8.61) greater before participants entered Kendra’s Law than after. Nevada County found Laura’s Law reduced use of incarceration by ninety-seven percent (five hundred and four days); and hospitalization by sixty-one percent.

Why do those with severe mental illness not seek help? There are three main reasons. One reason is because they are “anosognosia”, meaning they do not believe anything is wrong with them.⁴⁴ For example, they do not “believe” they are Abraham Lincoln, or the FBI planted a transmitter in their head – they “know” it. A subset of this group rejects treatment, then experiences hallucinations and delusions and becomes needlessly homeless. As Ron Thomas, Kelly Thomas’ father, said at the Orange County Board of Supervisor’s meeting January, 2013: “My son wasn’t homeless- he chose to live on the street.” The Grand Jury experienced an example of this condition during a recent ride-along with law enforcement, when an individual had to be

⁴² Superior Court: Los Angeles County Office of the Counselor in Mental Health “Conduct of Riese Hearings Information booklet for doctors and hospitals rev. July 1997

⁴³ Riese Hearing Basic Codes and Regulations related to Capacity Hearings: www.disabilityrightsca.org

⁴⁴ Anosognosia affects nearly 60% of individuals with schizophrenia and nearly 50% with manic depression, results that have been “replicated more than one hundred times in the research literature”. See Amador, X.F. *I Am Not Sick I Don’t Need Help*. Vida Press, 2d Ed 2007 p.6

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reassured that all the police radios were covered with foil so that the FBI could not spy on her and thus it was 'safe' to speak with us.

Fifteen percent of patients will do anything they can to avoid taking medication under any circumstances and may require coercion to remain compliant⁴⁵ These individuals often equate medication with "poison" when in the throes of their illness, or have "deep seated delusional beliefs about it".⁴⁶

Another group of individuals do not "volunteer" for treatment because, while they may recognize their need for medication when they are taking it, they soon persuade themselves they no longer need it when they feel well then relapse into illness and inability to recognize how much it helps. *"It is a common phenomenon that a patient functions well with medication, yet, because of the mental illness itself, lacks the discipline or capacity to follow the regime the medication requires."* *Olmstead v L.C.*, 527 U.S. 581,610(1999) (Justice Kennedy, concurring).

Finally, many untreated severely mentally ill individuals are not legally competent to "volunteer" for anything, because their symptoms preclude proper understanding of what "volunteering" means. Categorizing them as "voluntary" treatment recipients violates their constitutional rights, and subjects government personnel to suits for damages. See *Zinernon v Burch*,494 U.S. 113(1990). Good risk management requires treating these individuals as treatment-refusers, even if they are willing to sign documents "volunteering" for treatment.

Treatment-refusers with severe mental illness can be a public safety problem because they frequently injure themselves, attempt suicide or 'suicide by cop', set fires or destroy public property, or become violent towards others. Studies have shown that seriously mentally ill individuals who refuse treatment are more likely to be aggressive and violent than other mentally ill people, particularly when they also abuse drugs and alcohol,⁴⁷ which they often do in an attempt to self-medicate. Police now spend an inordinate amount of time on mental health issues instead of crime, and a disproportionate percentage of officer involved shootings involve untreated, seriously mentally ill individuals.⁴⁸

⁴⁵ Torrey, Dr. E. Fuller. *The Insanity Offense: How America's Failure To Treat The Seriously Mentally Ill Endangers Its Citizens*. W.W. Norton and Co. N.Y. 2008 at 117, quoting Joseph McEvoy, "One of the foremost psychiatric researchers on this issue"

⁴⁶ Torrey pp.117-118, citing multiple studies.

⁴⁷ Torrey. Pp.161, 180-181; Van Dorn, Richard; Volavka, Jan; Johnson, Norman. *Mental Disorder and Violence: is there a relationship beyond substance abuse?*

⁴⁸ Biasotti, Michael C. V.P., New York Chiefs of Police, *Management of the Severely Mentally Ill and its Effects on Homeland Security*, Naval Postgraduate School, 2011. Chief Biasotti's finding specific to California are available at <http://lauras-law.org/states/california/biasotticastats.html>

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California is presently “caring” for the sickest mentally ill in prisons.⁴⁹ That being said, the mentally ill in our prison system have also been charged with a criminal offense, convicted and sentenced. The Grand Jury can attest to this shocking reality first hand, having visited various Orange County jails on numerous occasions since July, 2012.

The *Mental Health Services Act* (MHSA/Proposition 63) original interpretation for allocating funds for the treatment of mental illness is that since Laura’s Law is mandated, treatment for mental illness is not eligible. However, treatment costs could be reimbursed from Proposition 63 but not associated court costs – which can be significant.⁵⁰

Laura’s Law in Orange County

Policy makers in Orange County have been looking at the feasibility of implementing Laura’s Law for a number of years. Because laws vary from one state or county to another, Laura’s Law has had to be examined in light of existing law in the State of California and in the County of Orange and, initially, been found wanting on several legal fronts.⁵¹

Several Orange County healthcare experts told the Grand Jury that the Board of Supervisors has recommended legislative changes that, when enacted, may allow the County to implement Laura’s Law. The Supervisors have instructed their lobbyists to seek changes that would:

- allow for *Mental Health Services Act* (MHSA) funds to be used to implement Laura’s Law;
- allow a cap on the number of people in the program and thus the amount of money funded;

April, 2013 saw unanimous legislative approval for two of these changes: use of MHSA funds and limits to the number of adults with severe mental illness who are treated.

In April, 2013, there were three major bills moving through the legislature being driven by Orange County law-makers.

- AB1265 (Conway) would extend the initial period of court-ordered treatment from six months to one year in order to help prevent relapse.

⁴⁹ For statistics concerning the correlation between the emptying of state psychiatric hospitals and the filling of state prisons with mentally ill inmates see Raphael, Steven, *The Deinstitutionalization of the Mentally Ill and Growth in the U.S. Prison Populations: 1971 to 1996* (Goldman School of Public Policy, University of California at Berkeley), <http://ist-socrates.berkeley.edu/~raphael/raphael2000.pdf>. Some 20% of state prisoners in California are mentally ill, an extraordinarily high percentage. Torrey, supra, pp.61-62, 128. As of 1995 (and probably still), the largest mental institution in the United States is the Los Angeles County jail. Id. at p. 57. See also, “Cuts to Mental Health Programs Shift Burden to Law Enforcement, Tsai, Gary, Sacramento Bee, January 28, 2012.

⁵⁰ Interview: mental health professional

⁵¹ For instance, in the State of California, an individual is presumed competent unless adjudicated incompetent.

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- SB585 (Correa and Steinberg) address the issue of the use of Mental Health Services Act (Proposition 63) funding.
- SB664 (Yee) insures that no voluntary mental health program serving adults and no children's mental health program will be reduced as a result of the Laura's Law implementation.

In addition to the Correa/Steinberg Bill, the Senate Health Committee approved Senator Lee's Bill by a 7-2 vote. This Bill (SB664) will allow counties to limit the number of cases they handle each year under Laura's Law, dissolving yet another of the stumbling blocks an Orange County mental health professional had previously noted to the Grand Jury.

As of June, 2013, the substance of these bills seems to be rolled into the Correa/Steinberg Bill, as the authors have agreed to put all their language into this one bill. SB585 seems to be the bill to watch.

On March 19, 2013, the Board of Supervisors passed a resolution authorizing the application of Article 4.7 chapter Two of the Lanterman-Petris-Short Act in the County of Orange that allows for an additional thirty day hold (following a fourteen day hold) for intensive treatment which will be beneficial to the individual and less intrusive than a conservatorship.⁵²

Mental Health professionals also pointed out that Orange County, through its multitude of existing mental health programs is doing everything in the *spirit* of Laura's Law except bringing an individual before the Court (the "Black Robe Effect").

The Grand Jury congratulates the Orange County Board of Supervisors on taking a positive stand on this issue and working proactively. Although one Supervisor told the press that he "had not fully decided his position on Laura's Law,"⁵³ another has led County efforts to work with Laura's Law and is quoted as saying: "If we can afford it, why not give it a try?"⁵⁴

Although there is indeed a "thicket of regulations to make the law unworkable," the Grand Jury believes that the top decision makers and law makers in Orange County can and will continue to take a positive and proactive approach in finding creative strategies that will benefit several groups tasked with dealing with mental health issues: the mentally ill themselves, law enforcement who is tasked with dealing with the problem, and the citizens of Orange County. If the previously mentioned Bill clears the

⁵² "...under Article 4.7 of chapter 2 of the Lanterman-Petris-Short Act a person who has completed a 14-day period of intensive treatment pursuant to §5250 of the Welfare and Institutions Code may be certified for an additional 30 days of intensive treatment under specified conditions, with additional safeguards for that person's individual rights, as an alternative to conservatorship which can last up to one year..."

Resolution of the Board of Supervisors of Orange County, CA March 19, 2013

⁵³ Wood, Tracy, *Voice of OC* 04.25.13

⁵⁴ Ibid

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Senate and the Assembly and is signed into law, the County may be able to implement a pilot Laura's Law program.

A CASE FOR ACCREDITATION

CALEA - The Commission on Accreditation for Law Enforcement Agencies, Inc. has been described as "...the benchmark for policing in the twenty-first century."⁵⁵ To date, in the State of California, there are seventeen accredited law enforcement agencies. Only two of those agencies are in Orange County: Garden Grove and Tustin. Our neighbor in Los Angeles County, Bell, with a staff size of forty, is in the process of accreditation, as are four others in California. One Sheriff's Department (Alameda County) is accredited as is the California Highway Patrol. There are five University/College law enforcement agencies accredited, of which the California State University Fullerton Police Department is one. The East Bay Regional Park District Police Department in Castro Valley, CA and the Oakland Housing Authority Police Department are also accredited.

CALEA was created in 1979 as a credentialing authority through the joint efforts of

- International Association of Chiefs of Police,
- National Organization of Black Law Enforcement Executives,
- National Sheriff's Association, and the
- Police Executive Research Forum.

The purpose of CALEA's Accreditation Programs is to improve the delivery of public safety services, primarily by maintaining a body of standards, developed by public safety practitioners and recognizing professional excellence.

The specific goals of CALEA are to

- strengthen crime prevention and control capabilities,
- formalize essential management procedures,
- establish fair, nondiscriminatory personnel practices,
- improve service delivery,
- solidify interagency cooperation and coordination, and to
- increase community and staff confidence in the agency.

⁵⁵ Sheriff Craig Webre, Lafourche Parish (LA) past president: National Sheriff's Association

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The CALEA accreditation process is a proven modern management model that, once implemented, presents a Chief Executive Officer on a continuing basis with a blueprint that promotes the efficient use of resources and improves service delivery - regardless of the size, geographic location, or functional responsibilities of the agency. This accreditation program provides public safety agencies an opportunity to voluntarily demonstrate that they meet an established set of professional standards that facilitates an agency's pursuit of professional excellence.⁵⁶

Those of us living in the County of Orange send our children to schools accredited by the Western Association of Schools and Colleges (WASC). School accreditation objectively assures that our children receive the best possible education: one that will provide them with the groundwork to continue on to top colleges and universities. WASC accreditation assures, among other things, that when our children bring home "A"s, the excellence that "A" represents is truly on par with "A"s in all other accredited educational institutions. We do not send our children to non-accredited schools because we recognize it may jeopardize their future professional success.

The Grand Jury believes our cities deserve like-quality police departments that achieve and maintain a measurable standard of excellence. Having an accredited police department means that the department has

- completed a self-assessment by complying with the applicable standards, developing proofs of compliance and preparing for an objective on-site assessment,
- hosted a team of CALEA-trained assessors at their department to determine compliance with standards, view operations and talk with the public,
- participated in an open review which, hopefully, awards accreditation to the department for a three year period, and
- maintained compliance with standards in order to retain its accredited status.

Reaccreditation occurs at the end of three years, following another successful on-site assessment and hearing before the Commission.

In Orange County, the two police departments accredited by CALEA account for less than ten percent (6.8%) of cities that have accredited police departments. The

⁵⁶ www.calea.org

"The confidence in our department has increased tremendously throughout our community since becoming an accredited agency."
--Former Chief H. Rilling, (CT)

"The program offers agencies the opportunity for improved transparency and delivery of services to the communities served....[T]he end result will be a better department for both members and citizens alike."
-Former Chief T. Younce
- NCSUPD

"It has reduced our liability cost and made my risk managers very happy."
-Sheriff T. Dunning, NE

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Grand Jury would like to see that number increased to *one hundred percent*. If, throughout the State of California, law enforcement agencies with as few as thirty-four staff (Pismo Beach) and as great as eleven thousand plus members (California Highway Patrol) find the accreditation worthwhile and necessary, the nineteen cities in Orange County and the Sheriff's Department should make it a priority. The Grand Jury is well aware of the financial pressures under which our police departments and city executives struggle. However, not spending the money to accredit the city police department is a classic example of "penny wise; pound foolish". In today's world, with law enforcement having become a process of continually having to deal with a myriad of complex issues and life and death situations, our city managers owe it first to the citizens of our cities as well as to our sworn officers, to ensure our police departments continually pursue professional excellence. A city that investments taxpayer money in this endeavor will gain an accredited police department with:

- greater accountability;
- reduced risk and liability exposure;
- stronger defense against civil lawsuits;
- stanch support from government officials, and
- increased community advocacy.

COMMENDATION

Finally, with the thousands of words written here, there are not words to express the gratitude and thanks we, as citizens, owe to the men and women who serve us day and night as law enforcement officers in the County of Orange. Their professionalism, bravery and service cannot be overestimated or taken for granted. It is because of our trust in them that we get up each morning without a thought to our safety and well-being. It is because of our trust in them that, when things go wrong, we call them first. Thank you.

FINDINGS

In accordance with California Penal Code Sections §933 and §933.05, the 2012 - 2013 Grand Jury 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.

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Based on its investigation of Police and the Sheriff's' Department in Orange County, the 2012 - 2013 Orange County Grand Jury has arrived at eleven principal findings as follows:

- F1 Although POST requires continuing education in the area of dealing with individuals who are mentally ill, it does not specify the number of hours or frequency of officer training; nor does it require that such training be documented.
- F2 Field officers desire more in-depth training in dealing with the mentally ill on the street. (Interviews)
- F3 There is one officer – in a very few instances two officers- for every one-thousand (1,000) citizens in a given city within the County who are expected to deal with the full range of law enforcement issues of that city.
- F4 Nationally accredited police departments police less than 10% of Orange County cities.
- F5 Not all Orange County cities have at least one officer trained in Crisis Intervention.
- F6 There is a broad spectrum of on-going training provided to patrol officers in order to develop their abilities and strategies in dealing with the mentally ill. Some departments provide minimal training; others have comprehensive programs in place.
- F7 Five departments have their patrol officers ride periodically with the homeless liaison officer. Seventeen do not.
- F8 Departments are reaching out – or beginning to reach out – to neighboring departments and to other skilled professionals, both in dialogue about the mentally ill and homeless issues in their cities, and to learn more effective strategies in dealing with these individuals.
- F9 All police departments believe that on-going training should be supported by Mental Health Services Act funding.
- F10 All police departments adhere to written policy, procedure and/or protocol regarding contact with mentally ill persons.
- F11 Policy and lawmakers in the County of Orange continue to examine Laura's Law in light of its potential impact on the mentally ill and all citizens for positive outcomes.

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RECOMMENDATIONS

In accordance with California Penal Code Sections §933 and §933.05, the 2012 - 2013 Grand Jury requests responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of City Police Departments and the Sheriff's Department in Orange County, the 2012 - 2013 Orange County Grand Jury makes the following four recommendations.

- R1 Require specific continuing education for all police officers and sheriff's deputies in interacting with the mentally ill and homeless population:
- Orange County City Police Chiefs and the Sheriff-Coroner shall corroborate with the Orange County Chiefs and Sheriff's Association to set the type, hours and frequency of this supplemental training;
 - Include Crisis Intervention Training (perhaps the Memphis model);
 - Training is to be documented. (F1,F2,F3,F4,F5,F6,F7,F8,F10)
- R2 All Orange County City Police Departments and the Sheriff's Department shall be accredited with a national accreditation agency within five (5) years. (F4,)
- R3 The County of Orange Board of Supervisors shall 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. (F11)
- R4 The Orange County Department of Mental Health Services and the Orange County Board of Supervisors shall provide funding for on-going police officer training through Mental Health Services Act funding. (F9)

REQUIREMENTS AND INSTRUCTIONS:

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,

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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 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 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:

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Responses Requested:

Orange County Health Care Agency: F9

Responses Required:

Orange County Board of Supervisors: F11

Orange County City Police Chiefs and the Sheriff-Coroner: F1, F2, F3, F4, F5, F6, F7, F8, F10

Responses Requested:

Orange County Health Care Agency: R4

Responses Required

Orange County Board of Supervisors: R3, R4

Orange County City Police Chiefs and the Sheriff-Coroner: R1, R2

“Best Interest of the Child” Lost Child Support Costs 1.3 Billion



2012-2013

“Best Interest of the Child” Lost Child Support Costs 1.3 Billion

SUMMARY

THIS STUDY PLEADS FOR THE PARTICIPATION OF FATHERS IN THE RAISING OF CHILDREN. HOWEVER, MANY A MOTHER, LEFT ENTIRELY OR NEARLY ENTIRELY, TO HER OWN DEVICES, HAS RAISED CHILDREN IN AN EXEMPLARY WAY DOING CREDIT TO THEMSELVES, THEIR CHILDREN AND THE COMMUNITY. There are not words enough to honor their accomplishment.

This study begs for a paradigm shift regarding support for separate or parallel parenting. Title IV-D, an amendment to the Social Security Act, holds Orange County hostage in significant ways regarding collection of child support. Though well intended to aid collection of child support, it has often driven wedges between mothers and fathers; and, in essence divorced many children from their fathers. The results have devastating effects on all concerned. Fathers do not pay support; mothers do not receive support; children suffer, and the County is stuck trying to collect the uncollectable.

Orange County Child Support Services (CSS), created at the mandate of federal law¹, collects less than two thirds of the support it is charged to collect. This costs the tax payers over \$60 million.² This uncollected support has grown to a current amount of almost \$1.3 billion.³ Such a failure demands review. A major factor in the collection of child support is the father’s involvement in his child’s life⁴. Over ninety percent (90.2%)

¹ 42 USC 666(a)(9), CA Family Code §666(a)(9)

<u>Description</u>	<u>MOD Budget</u>
Salaries & Employees Benefits	\$49,172,000
Services-Supplies & Others	<u>10,628,000</u>
Total Appropriations	\$59,800,000
Intergovernmental Revenue (66% Fed 34% State)	\$55,270,605
Operating Transfer in from Fund 12C	<u>4,879,395</u>
Total Revenue	\$60,150,000
NET COUNTY CONTRIBUTION	\$ (350,000)

³ Orange County Department of Child Support Services FY 2011-12 Budget

Annual budget for California Child Support Services (CSS) 2011-12 reported by the director of CSS.

⁴ Though the payer of child support could be either the father or the mother, in by far the majority of the cases in Orange County (88%), the father is the payer and the mother is the recipient. The pejorative term often used for the payer is the “non-custodial parent” inferring some non-consequential relationship to the child other than to pay child support. The payer in this report shall be referred to as the father in respect to the fact that he is the payer 88% of the time. (88% comes from an interview with management of CSS October 2012.)

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of fathers with joint custody pay support. Less than thirty eight percent (37.9%) of fathers pay support when denied any visitation.⁵

Children raised without paternal care are at high risk for deviant behavior, including juvenile detention, criminal incarceration, unwanted teen pregnancy, drug use and running away from home. All these behaviors are far more costly in both public financial costs and loss of human potential than the child support itself.⁶

Joint parenting will increase child support payments and reduce other social problems. This study advocates a five part program:

- (1) Increase the father’s shared time with his children to as close to 50% as possible.
- (2) Counsel fathers in parenting.
- (3) Counsel both parents in parallel parenting including developing a keen appreciation of the child’s view point.
- (4) Seek financial support from Mental Health Services Agency (MHSA),⁷ which is required to spend 20% of its funds on prevention and early intervention with a focus on wellness and resiliency programs.
- (5) Establish an oversight committee. The committee would, among other things, monitor the effectiveness of educational and counseling⁸ programs and control the funds to cover such programs.

REASON FOR STUDY

The lack of child support has profound ramifications, financial hardship being only one. Failure to pay support is symptomatic of abandonment of parental involvement. Statistical evidence indicates children growing up without the meaningful involvement of both parents suffer hugely disproportionate problems. These range from failure to graduate from high school, unwanted teenage pregnancy, drug usage and criminal incarceration. Fathers who are meaningfully involved with their children tend to pay support. This study makes recommendations to gain the participation of both parents and saves money.

⁵ 1988 Census “Child Support & Alimony: 1989 Series “P-60, No. 173 pages 6-7; and “US General Accounting Office Report” GAO/HRD – 92 39 FS Jan. 1992

⁶ See Paternal Parenting, pages 7 and 8, which specifically identified such deviant behavior and vets the statements with authoritative footnotes.

⁷ Prop 63 passed in November 2004 and later amended in March of 2011 created the Mental Health Services Act which in turn created the Orange County Mental Health Service Agency.

⁸ No distinction is made between counseling and educational programs in this study.

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METHOD OF INVESTIGATION

The research used to authenticate the findings and justify the recommendations of this study is the following:

1. A panel of five family law experts presented opinions regarding the collection of child support and parenting geared to “the best interest of the child.” The experts consisted of (1) a judicial officer, (2) a recently retired Child Support Services attorney, (3) a woman’s advocate social worker, (4) a family law attorney who is also an officer of a family educational/counseling program and (5) an officer of a child abuse prevention program.
2. The Grand Jury made a national search for statistics and professional analysis of children’s welfare in relation to paternal care.
3. Members of the Grand Jury visited the orientation program for an eight week parenting program for separated parents.
4. The Grand Jury met with Orange County CSS leadership which presented its analysis of what works and what doesn’t work regarding:
 - a. Child Support
 - i. Compliance with court orders,
 - ii. Collection of arrears,
 - iii. Effective child support orders, and
 - iv. Most significantly, orders affecting “THE BEST INTEREST OF THE CHILD.”
 - b. Statistical analysis regarding paternal involvement.
5. The Grand Jury conducted legal research into both Family Code and Welfare and Institutions Code regarding child support and child care.
6. The Grand Jury researched the newly amended Proposition 63 mandating dollars be spent on mental health prevention and early intervention programs. This is seen as a possible source of funding family and particularly paternal education and counseling.
7. Information was obtained from the 2012/13 Orange County Grand Jury Criminal Justice Committee investigation regarding:
 - a. The effect of paternal influence on criminal incarceration.
 - b. The effect of paternal involvement or lack thereof in juvenile delinquency.
 - c. The cost of detention of both adults and juveniles.
 - d. The effect of recidivism.

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BACKGROUND AND FACTS

CHILD SUPPORT

Almost \$193 million dollars (\$192,583,564) of child support was ordered in 2011/12 which fell upon Orange County Child Support Services (CSS) to collect and distribute.⁹ Over \$122 million dollars (\$122,222,917) was actually collected by CSS (64%). This left over \$70 million dollars (\$70,360,647) uncollected.¹⁰ This sum fell into arrears, that vast pit of support owed but never paid going back for many years. To its credit, CSS did reach down into those depths and pull out more than \$58 million dollars (\$58,133,428) in arrears (which included 10% simple annual interest on the unpaid support).¹¹

From 1974 to 2002, child support enforcement was conducted by the District Attorney on a law enforcement model. Incarceration and threats of incarceration, liens and license suspensions were the order of the day. There was push back and the effectiveness of the District Attorney was questioned. In 2002, CSS became a separate County agency tasked to do the job of collecting child support, albeit restricted in its authority by state and federal law. CSS took a gentler, kinder customer oriented approach. The results were dramatic. CSS collections and parental compliance increased by over 50% (from collection rates of about 37% to about 65%).¹² Sixtyfive percent compliance is still unacceptable. The goal here is to significantly increase that figure.

One measure of the effectiveness of CSS is in the simple return on investment. To its credit, it is currently collecting about \$3.10 for every dollar it spends as compared to collection of \$2.29 by the state of California.¹³ The total annual budget for CSS is more than \$60 million dollars (\$60,150,000).

Orange County CSS owes at least some of its success to its research into which orders for support are paid and which not. “[T]he...maximum compliance, consistency of payments and highest collection per child...” come from orders of 20% or less of a father’s income.¹⁴ To clarify, if a father makes \$3,000 per month and the mother earns nothing and they have one child, the father will be ordered to pay about

⁹ Orange County Department of Child Support Services [CSS] FFY 2012 report prepared specifically for the 2012-13 Orange County grand jury, page 1

¹⁰ Ibid page 1

¹¹ Ibid, pages 1, 5

¹² Figures supplied by CSS.

¹³ Ibid, page 2

¹⁴ Op Cit, page 2

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\$600 per month regardless of his time spent with the child. He will likely pay this. If he has three children, the order will likely be in excess of \$1,000.¹⁵ Thus, he is likely to refuse and disappear. If a father has children with several women (not unusual); the mothers will likely get nothing.

Both parents and three children will be hard pressed to live on the available income and maintain two or more households on \$3,000 or even \$6,000 of gross income. This is no simple task. Paying taxes, rent, buying a car plus insurance and gas, buying clothes, putting food on the table plus supporting a child is a study well beyond the simple issue of child support. But, it is contended here that love of **both** parents is free and can smooth the rough edges of the struggle to get by.

The effectiveness of CSS needs to be measured in the *best interest of the child*¹⁶. The charge of CSS is supposedly limited to collection of dollars only. That is, nowhere in Family Code § 17000 does it directly authorize CSS to set custody and visitation between parents, scrutinize incomes or potential to earn, or challenge any of the other factors affecting the amount of child support.

The time share each parent has with their child(ren) is significant in determining the amount of support a father must pay. Unfortunately, too many fathers simply accept a minimal time share resulting in higher support orders. Understandably, mothers are accepting of this so as to obtain higher support orders. An order is but a piece of paper with ink on it. Substance is actual payment.

ARREARS

The \$1.3 billion in arrears remains a dead fetid carcass tied to the delinquent father. It is basically beyond collection by CSS or the mother and the stink of the rot smothers the father. He owes it; he most often cannot afford to pay it, and it is beyond bankruptcy protection.¹⁷ CSS can forgive it only if nothing is owed the mother. If the arrears are entirely owed the County for repayment of aid it provided the mother, the county can and does often forgive such indebtedness. However, if a single dollar is owed the mother, that is her dollar and no one has the right to demand she give it up. CSS is not relieved of its obligation to collect, not just her dollar, but also that owed the County. If the father owes \$10,000 in arrears and if the County had provided the

¹⁵ Calculations based upon FC § 4055

¹⁶ California Family Code § 3040. (a) Custody should be granted in the following order of preference according to the best interest of the child...

¹⁷ The arrears can be a few dollars which can be collected. But years of non-payment of even modest amounts, e.g. \$300 per month, accruing over years plus 10% court rate interest often amount to \$60,000, \$80,000 and even hundreds of thousands of dollars of liability.

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mother \$9,500 in aid, not until the father pays the mother \$500 making her whole for the full \$10,000 owed her, can the County compromise the remaining \$9,500 of support owed by the father. Very often, the animosity bred from raising children entirely on her own without the ordered child support leaves the mother with little incentive to forgive the delinquent father. A mother’s loathing of the delinquent father may be less than admirable; but, it is hers and it is understandable.

Lest the reader conclude that all child support is wrenched from fathers with a dentist’s pliers, it should be acknowledged that many millions of dollars of child support are paid by loving fathers committed to the welfare of their children without any involvement by CSS. CSS is primarily charged to act only when child support is delinquent.

PATERNAL PARENTING

The panel of family law experts shared the opinion that payment of child support was symptomatic of a much greater problem; lack of paternal involvement in the lives of the children. Statistics show that fathers sharing time with their children pay child support much more regularly than fathers who do not. Over ninety percent (90.2%) of fathers with joint custody pay support. Less than thirty eight percent (37.9%) of fathers pay support when denied any visitation.¹⁸ The benefit of paternal involvement touches issues far beyond the support payments:

- 63% of youth suicides are from fatherless homes (U.S. Department of Housing and Human Services, Census Bureau),¹⁹
- 90% of all homeless and runaway children are from fatherless homes,²⁰
- Girls whose parents separated between birth and six years old experienced twice the risk of early menstruation, more than four times the risk of early sexual intercourse, and two and a half times higher risk of early pregnancy when compared to girls in intact families,²¹
- 85% of all children that exhibit behavioral disorders come from fatherless homes,²²
- 71% of all high school dropouts come from fatherless homes,²³

¹⁸1988 Census “Child Support & Alimony: 1989 Series “P-60, No. 173 pages 6-7; and “US General Accounting Office Report” GAO/HRD – 92 39 FS Jan. 1992

¹⁹ The Fatherless Generation 9 Feb 2011, <http://thefatherlessgeneration.wordpress.com/bibliography/>
²⁰ *ibid*

²¹ National Fatherhood Initiative, 20410 Observation Dr. #107, Germantown, MD 20876, <http://www.fatherhood.org/media/consequences/statistics> quoting Robert J. Quinlan, “*Father’s absence, parental care and female reproductive development in evolution and human behavior*”, Human Behavior 24 November 2003:376-390

²² The Fatherless Generation 9 Feb 2011, <http://thefatherlessgeneration.wordpress.com/bibliography/>

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- Children of absent fathers are 69.1% more likely to use drugs,²⁴
- 70% of juveniles in state-operated institutions come from fatherless homes,²⁵
- 85% of all youths sitting in prisons grew up in a fatherless home.²⁶

The list goes on to touch a myriad of social ills disproportionately coming from fatherless homes: bullying, poor academic performance, promiscuity and teen pregnancy, mental health problems and more. As glaring as these statistics are, 50% of mothers “see no value in the father’s continued contact with his children.”²⁷ Only 11% of mothers value their ex-husbands’ input when it comes to handling problems with their children.²⁸

The need for paternal involvement has not gone completely unnoticed. *Fatherhood 101*, as it existed in Orange County in the mid 1990’s was an eight week program. The family law court, empowered by Family Code §§ 3190-3191, offered fathers more time with their children and therefore a reduction in child support provided they complete the *Fatherhood 101* curriculum. The fathers entered the program reluctant if not outright hostile. Being a father was not “macho.” Their mindset was that mothers or grandmothers were responsible for raising children – not men. Within four weeks attitudes changed. By graduation, these men would walk through fire to be with their children – and they paid their ordered child support. They also reported significant change in their relationships with the mothers of their children. Respect begat respect and mothers, fathers and particularly children all profited. The program died for lack of financial support.²⁹

Child Abuse Prevention Center, Inc., in Orange County has committed to reestablish a like program by July 2013 provided funds can be found to support it.

The National Fatherhood Initiative (NFI) from Germantown, Maryland was established in 1994, on the premise that, “Widespread fatherlessness is the most socially consequential problem of our time.”³⁰ The report suggests that this view is not

²³ “*I Need a Father-(A Fathers Role in Child Custody)*” 19 Oct 2010, fathersrightsDallas.com/tag/national-principals-association-report-onsite-state-of-high-school/

²⁴ [Mail Online](http://www.dailymail.co.uk.news) – November 13, 2012, “*Absent fathers are fuelling drug addiction...*” by Jessica Satherly, <http://www.dailymail.co.uk.news>

²⁵ US Dept. of Justice, Special Reports, Sept 1988 (other more current research papers continue to reference this study)

²⁶ Kelly, Joan and Wallerstein, Judith, PhD: SURVIVING THE BREAKUP: HOW CHILDREN AND PARENTS COPE WITH DIVORCE, Basic Books, New York, 1980

²⁷ *Ibid*, page 125

²⁸ EDK Associates Survey on Women for Redbook Magazine, Redbook, Nov 1994, page 36

²⁹ As reported by Gene Kent, one of the founders of Orange County Fatherhood 101 and the facilitator for classes regarding Father’s legal rights and responsibilities.

³⁰ National Fatherhood Initiative, 20410 Observation Dr. #107, Germantown, MD 20876, fatherhood.org

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hyperbole, but the essence of the fabric of a strong vibrant society. NFI began as a predominantly African American organization addressing the needs of a particular sub-culture. Likewise, Orange County, with one third Hispanic population,³¹ needs to address the special issues of the Spanish speaking part of our community. About 64% of Spanish speaking fathers' child support is in arrears.³²

Kids First (www.kidsfirst.org), established in Orange County around 1997, counsels both parents as well as the children of families of divorce and paternity. It consists of three hour sessions every Saturday for eight weeks. The Family Law courts, of their own initiative or at the suggestion of counsel representing a mother or father in the throes of custody and/or visitation disputes, order families to attend. Unfortunately these orders usually come only after the parents have figuratively torn limbs from their children, so corrupted are they in their anger throughout the divorce process. Nonetheless, the results of this parenting program has encouraged the courts to continue ordering this type of family counseling and thus obtain better compliance with court orders. The "better" compliance is witnessed by the court when the parties return with evidence of completion of the counseling program and stipulate to amenable orders for custody, visitation and support orders. By no means does this study suggest reunification of the family, but rather a better respect among the parties.

The Grand Jury learned that the actual cost for *Kids First* is about \$400 per participant – mother, father and each child. Currently, *Kids First* charges about \$280 per participant to make the program affordable. This cost factor is a limiting issue preventing more utilization. As valuable as counseling is, its continuation without financial support is questionable as witnessed by the demise of *Fatherhood 101*.

Orange County juvenile detention facilities recognize the value of paternal contact to the extent that it is providing incarcerated fathers the opportunity to hold, cuddle and bond with their children. This is referred to as the “Baby Elmo” program. The motivation is twofold. The first is to establish a relationship so powerful and important to the father that he will act responsibly and avoid any acts that might lead to his re-incarceration. The second is to provide the child with a father. This will improve the child’s chances for success in life.

³¹ United States Census Bureau 8 September 2012, www.quickfacts.census.gov

³² Orange County CSS FFY 2012 report prepared specifically for the 2012-13 Orange County Grand Jury, page 5

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The Orange County jails are currently investigating initiating a similar program for adult inmates who might reasonably benefit from such a program and who pose no security risk.³³

The fact that both juvenile detention and the jails are seeking ways for father and child to bond speaks particularly well for paternal training similar to the defunct *Fatherhood 101* program.

COST OF PARENTING

The Grand Jury found three sources of money to cover the costs of counseling parents, and particularly fathers, as described above.

The first source is the individual himself. Family Codes §§ 3190, 3191, which authorizes the court to order counseling, makes no comment as to the cost of the counseling. The individuals ordered to attend are required to meet those costs themselves. The courts are conscious of an individual’s capacity to pay and generally make no orders that simply cannot be obeyed for lack of money.

The second source of funds to pay for counseling is the “lag” money. There is often child support due back to the date of a petition or motion for child support which isn’t brought to court for two to three months or longer. For example, a petition or motion for child support may be filed April 1, but not be ruled on until June 1. If, on June 1, the court orders \$500 per month support from April 1, the father is already responsible for \$1,000 in arrears. This \$1,000 is the “lag” money because the money due lags the actual order. It is conceivable that this lag money could be used to pay for the counseling. The court could rule on a case by case basis whether or not to add this lag money to the end of the father’s child support obligation with or without interest being added.

The third source of money could be obtained from the Mental Health Services Act. In 2004, MHSA levied a 1.0% income tax on personal income in excess of one million dollars (\$1,000,000). The tax generated hundreds of millions of dollars annually to fund mental health initiatives in the state. According to the County of Orange Health Care Agency Behavioral Health Services FY 2012-13 annual update (May 24, 2012), the agency budgeted over \$100 million (\$101,347,346).

³³ So stated the Director of Inmate Services Division, Orange County Sheriff-Coroner Department August 2012

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In 2007, the California Department of Mental Health developed guidelines for counties and dictated that 20% would go to help people who had never been diagnosed with mental illness or even shown any evidence of mental illness. The idea was to promote mental wellness, not just treat disorders.³⁴

The change in law has become a lightning rod for criticism that funding originally meant for persons suffering from mental illness is now exempt and is being spent on wellness centers, yoga classes, gardening classes, etc. One of the most outspoken critics is the co-author of Proposition 63. Children and youth in stressed families are recognized as high risk of behavioral and emotional problems, and could thus potentially benefit from MHSA funds. Orange County recognizing this priority has committed 75% of the 20% for wellness to prevention and early intervention for those people under age 25. Further, MHSA considers financial support of parenting programs a benefit to children even though the money may be given to the parents of children.³⁵

Program approval and allocation of funding is a complex process overseen by the Orange County Mental Health Services Oversight Steering Committee and ultimately voted upon by the County Board of Supervisors.

COSTS OF NOT PARENTING

The cost in loss of human potential is beyond calculation. Neither this study nor any other can place a dollar amount on the pain of a runaway, a suicide, a drug addiction, a school drop-out, a juvenile detention, a rape, an unwanted pregnancy, a long term incarceration for commission of a felony or any number of other self-destructive acts. These costs relate directly to dollar costs. For this study, only those direct costs easily calculable are considered, namely:

Juvenile Detention: The Orange County bed costs per day to hold a juvenile delinquent is \$420.56. Obviously the removal of one child per year from the detention rolls will not save the County \$153,504 (\$420.56 times 365 days). There are fixed costs that must be met to keep the facility open. However, just clothing, food and household costs amount to \$6,431 per child per year.³⁶

³⁴ California Code of Regulations §3400: (b) Programs and/or services provided with MHSA funds shall: (1) Offer mental health services and/or support to individuals/clients with serious mental illness and/or serious emotional disturbance, and when appropriate their families. (A) **The Prevention and Early Intervention component is exempt from this requirement.** (Emphasis added)

³⁵ Orange County's commitment to its youth was reported by MHSA leadership.

³⁶ Bed Costs per Day 2012 for all juvenile detention facilities provided by Orange County Probation Dept.

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Criminal Career: A career criminal costs Orange County about \$65,000 for the first arrest. If criminal behavior persists resulting in a life sentence, the cost to the County will be about \$5.6 million.³⁷

Orange County Financial Concerns: Social Services has a huge interest in the collection of support. Dollars that a father does not pay are dollars Social Services is committed to pay to assure the welfare of needy mothers and their children.

OVERSIGHT COMMITTEE

There is no public organization which monitors the welfare of children of separate parenting; however, there exists at least one citizen oversight committee in Orange County: Juvenile Justice Commission. It is specifically authorized by California Welfare and Institution Code §§ 225-231. It is to have 7 to 15 commissioners appointed by the presiding judge and is financed with a state budget of \$159,000 used primarily for administrative expenses. The significance of this commission is its precedence as a citizen’s oversight commission, not its review of children of separated parents.

A similar committee will be vital for the implementation of the recommendations of this study. It is envisioned that this committee would:

- (1) Propagate the availability of educational and counseling programs designed to improve parenting as described.
- (2) Monitor the effectiveness of such programs. A CSS committee person could statistically report changes in child support payments by participating parents. A committee person representing the educational/counseling programs could share program completion questionnaires. A committee person from MHSA could measure the dollars spent against data from other committee members.
- (3) Act as a financial clearing house to assure parents who would likely benefit from counseling and education are not denied for lack of money.
- (4) Petition the Behavioral Health Director to appoint an Oversight committee person to sit on the MHSA Steering Committee.
- (5) Do such other things as become necessary to maximize a child’s opportunity to a good mother and father.

³⁷ “*New Evidence on the Monetary Value of Savings on High Risk Youth*” Dec 2007 by Mark A. Cohen, Vandenberg University and York University. Also referenced by the Orange County 2008/09 Grand Jury, “*Education of Parents and Developments of Strategies to Keep Their Children Out of Gangs*”

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The committee members need to include among others:

- (1) A CSS representative,
- (2) A member from Court services -- Mediation,
- (3) An attorney from the Family Law Section of the Orange County Bar,
- (4) An attorney from the Hispanic Bar,
- (5) An attorney from Legal Aid,
- (6) A representative from the participating parent/child counseling programs in Orange County,
- (7) A social worker and
- (8) A representative from Orange County Behavioral Health Services familiar with the Mental Health Services Act (Prop. 63).

CSS brings a paid staff to initiate such a committee. In addition it brings a research department which tracks the effectiveness of support orders. Its many attorneys have more hands-on experience in the making of child support orders than any other entity short of the courts themselves.

Court Services -- Mediation, though beyond the jurisdiction of the Grand Jury would likely desire membership in as much as California Law mandates that parents contesting child custody must first consult with Mediation.³⁸ For Mediation to be most effective, it is imagined that it would want to work in harmony to influence child custody and the resulting support.

Attorneys from the Family Law Section of the Orange County Bar are the squires doing battle daily in the family law courts and the Child Support Courts. Their participation is essential as they and the CSS attorneys are the principal legal players involved.

An Attorney from the Hispanic Bar is essential in acknowledging that a huge percent of the families affected are Hispanic.

MHSA has an obligation under Prop 63 to fund prevention and early intervention programs for Orange County. MHSA currently does fund programs for divorced and separated parents.³⁹ MHSA can serve Orange County well by sponsoring programs that help assuage the hurt to children of divorced and separated parents. MHSA's hold on the purse strings would have tremendous influence on oversight.

³⁸ Family Code § 3170

³⁹ For example, MHSA financially supports Children's Support and Parenting Program (CSPP provides an 11 week series of 1 ½ hour seminars).

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FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2012/13 Grand Jury requests responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of child support and parenting in Orange County, the 2012/13 Orange County Grand Jury has arrived at seventeen principal findings as follows:

- F1 The sum of uncollected child support ordered in 2011/12 (\$70,360,647) plus the accumulated arrears going back many years total over \$1.3 billion⁴⁰. Uncollected dollars of this magnitude scream for attention
- F2 The two most salient statistics that lead to payment of support as ordered are:
1. Orders that demand more than 20% of a father’s income tend not to be paid.
 2. Orders that grant fathers significant custody/visitation with their children tend to yield payment as ordered.
- F3 California Family Code § 4055 dictates what percent of a father’s income he must pay based primarily on his time share with his child(ren) and the parents’ respective incomes. The time share and the amount of income attributed to each parent is a matter of judicial discretion.⁴¹ California Family Code charges CSS to set and collect child support. There is no provision for advocating for factors which will yield pragmatic orders; that is orders that will maximize income for the mothers and compliance by the fathers.
- F4 Fathers routinely accept orders granting them about 20% time share with their children.
- F5 Reasons for fathers’ acceptance of minimal time shares with their child(ren) are many and beyond the scope of this study; however, from anecdotal stories from the parenting programs referenced in this study, some reasons are:
1. Lack of appreciation of their own worth as fathers,

⁴⁰ Orange County Child Support Services provided records back to 2000 when the arrears were reported to be \$1.095 billion to the present.

⁴¹ Income is based upon three factors: “actual earnings” (a pay stub for example); “earning capacity” which will charge an individual with the ability to work even though he/she may not be working at the time; and, “life style”, which for example credits an individual with income when enjoying “free” rent. Each of these three means of determining income can lead to different interpretations of actual income.

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2. Perception they have no time to care for their children in spite of the fact that the mothers miraculously care for their children with utilization of the very same 24 hours per day,
 3. Fear of the responsibility and “know how” of parenting,
 4. Often parenting is not seen as “macho”,
 5. Reluctance and outright refusal by mothers to permit fathers to have contact with “their” children due to:
 - a. Animosity toward the men who got them pregnant,
 - b. Animosity toward the men who have ignored their children to date,
 - c. Animosity toward the men who scorned them (“...hell hath no fury...”),
 - d. distrust of a father’s capability to care for the child (they never saw “Three Men and a Baby”),
 - e. Animosity over differing and/or conflicting parenting styles and issues.
- F6 Orders for support that are more than 20% of a father’s income will likely result in less actual support paid. An order for \$400 for a man earning \$2,000 is likely to yield an actual payment of \$400. An order for \$600 for a man earning \$2,000 is likely to yield no payment at all. Even if CSS is able to enforce collection, the cost to collect the extra \$200 will likely be equal to or greater than the \$200. Fathers tend to take the attitude that if they are to be delinquent for a penny they might as well be delinquent for a dollar.
- F7 Fathers who significantly participate in parenting their child(ren) pay the most child support. Aside from the actual support order, they can also be counted on to pay for the children’s extracurricular activities and luxury items.
- F8 Payment or non-payment of child support is only symptomatic of a much greater parenting issue. Children raised without paternal parenting fall prey to a plethora of social ills ranging from dropping out of high school to criminal incarceration. Every child growing up without a father is not doomed; but, statistics show a hugely disproportionate number of children without paternal care suffer very serious human and social ills.
- F9 Counseling men who have ignored their children can, and has, turned them into devoted fathers as evidenced by the success of the now defunct Fatherhood 101 program.
- F10 Hispanics constitute over one third of the population of Orange County. This increasing demographic deserves sympathetic attention to their unique

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conditions, including among other things: language, culture, and economic status.

- F11 Counseling the adult female, the adult male and the children of their union has and can have the following positive effects:
1. The counseling creates understanding and empathy between the adults for their respective roles as mothers and fathers. This is no small thing. It decreases the animosity and outright hatred between the adults that so often bleeds onto the children.
 2. The understanding and empathy in turn results in
 - a. better compliance with support orders and
 - b. better compliance with custody/visitation exchanges and happier, less stressed children.
- F12 The law, California Family Code §§ 3190 – 3191 gives the court the authority to order counseling at its discretion and there exists the means to pay for the counseling for parents and children, specifically:
1. The parents themselves can pay,
 2. Lag money can be used to pay,
 3. Orange County MHSA (Prop 63) has discretionary money for counseling.
- F13 Ignoring paternal parenting is too expensive to allow it to continue. The many hundreds of millions of dollars in unpaid child support and the social failings result in both an incalculable loss in human potential and the financial cost of incarcerating society’s failures.
- F14 CSS had a \$350,000 net county contribution in 2011/2012.
- F15 Orange County MHSA (Proposition 63) is obligated to use 20% of its budget for programs for prevention and intervention, and of that Orange County has committed that 75% is to be used for the County’s youth.
- F16 Promotion of mental wellness includes, among other things, support of programs that prevent youth suicides, youth runaways, unwanted teenage pregnancy, behavioral disorders, juvenile delinquency and high school drop outs. Children of divorced and separated families are recognized as high risk for such behaviors.
- F17 The existence of Orange County Juvenile Justice Commission (JJC), which reviews juvenile detention, provides precedence for the creation of a parenting commission.

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RECOMMENDATIONS

In accordance with California Penal Code Section 933 and 933.05, the 2012/13 Grand Jury requires responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of child support and parenting in Orange County, the 2012/13 Orange County Grand Jury makes the following six recommendations.

- R1 Orange County Child Support Services is to recommend support orders that will most likely result in payment. Any proposed order in excess of 20% of the father’s income should be viewed as unlikely to be collectable. This study acknowledges CSS’s role per California Family Code § 17000 as an extension of federal law limiting it to the collection of support.⁴² Again, this study recommends CSS actively aid parents in seeking orders that will most likely result in payment – not just printed numbers on paper orders. (F1, F2, F3, F4, F5, F13, F14.)
- R2 CSS should recommend orders that offer the father lower current support so he can afford payment towards arrears.⁴³ (F1, F2, F3, F4, F5, F6, F7)
- R3 As appropriate, CSS should seek orders that mandate the father have counseling or attend an educational program. The word “*Appropriate*” in the prior sentence acknowledges the courts ultimate jurisdiction as to which fathers would benefit. Upon completion of such counseling, father time with the child(ren) should be increased resulting in affordable child support. The cost should be paid with lag money if possible and from Orange County MHSA funds if beyond the father’s ability to pay. (F9, F10, F11, F12)
- R4 As appropriate, CSS should seek an order as appropriate for both parents and the child(ren) to complete counseling. (A caveat to this recommendation is that a

⁴² CSS is not specifically authorized to advocate what orders should be. This is foolish considering CSS must inject some logical time share and incomes for the parents to determine child support. In fact, parents come to CSS ignorant of anything but their fear. Mother is fearful she will not get enough money to support herself and the children. Father, if he has the courage to meet with CSS at all, fears he will not have enough to live on after paying support. CSS knows that orders for more than 20% of father’s income will likely drive him underground and he will pay nothing at all. Father’s disappearance not only denies Mother of support, it deprives the children of a father.

⁴³ In total Mother should receive more actual support payment than she would otherwise. Father’s benefit is the opportunity to ultimately rid himself of the burden of arrears.

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“counseling order” should not delay an immediate support order.) The cost of such counseling should be paid by the parties if they can afford it or with lag money if possible or from Orange County MHSA funds. (F4, F5, F10, F11, F12)

R5 CSS should form a Parenting Commission composed of following:

1. At least one representative from CSS.
2. One member from Court Services – Mediation.
3. One attorney from the Family Law Section of the Orange County Bar,
4. One attorney from Legal Aid.
5. At least one representative from a participating counseling program.
6. One family oriented social worker.
7. One attorney from the Hispanic Section of the Orange County Bar.
8. One representative from Orange County MHSA.

The Commission should do, among other things:

1. Collect money and/or seek commitments from Orange County MHSA. Make the money available to mothers, fathers and children if ordered by the court to get counseling.
2. Monitor counseling programs to determine their effectiveness.
3. Work with other groups that might promote justice between separated mothers and fathers to protect children from the potential devastation of growing up without a father.⁴⁴
4. Promote orders in the family law arena that will likely yield compliance and maximum contact with both parents.

Child Support Services should initiate the creation of this commission utilizing part of its County Contribution (\$350,000 in 2011/2012). Future costs should also be borne by CSS. (F12, F13, F14, F15, F16, F17)

R6 The Department of Mental Health Services should continue supporting counseling/educational of at least 18 hours. The curriculum should be geared to teaching fathers the skills, rights and responsibilities necessary for parenting. This may be best done with social service agencies in the community. The counseling should be sensitive to Hispanic issues and include classes in Spanish. (F9, F10, F11, F12, F13, F14, F15, F16, F17)

CAVEAT TO RECOMMENDATIONS: *The wisdom of the courts does and should supersede any recommendations of this report. Every mother, father and child is*

⁴⁴ . Orange County Jails and Juvenile Detention Facilities are two such groups anxious to lower recidivism by encouraging men with children to assume their roles as fathers.

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unique as are their circumstances. The courts bear an enormous burden in cyphering out justice. Nothing herein is meant to challenge the judgments the courts might make.

It must be emphasized that the ultimate goal of this study is to relieve the suffering of the children of divorce and those born without the benefit of a coupled mother and father. They may become better parents improving the peace and joy of future generations. The financial savings to the County is but a side benefit. Near time financial savings may be realized in immediate compliance with more pragmatic child support orders. The big savings will pay off as the next generation escapes unwanted pregnancies, drug addiction, criminal incarceration and other social ills.

REQUIREMENTS AND INSTRUCTIONS:

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 therefor.

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

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- (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 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 Requested:

Orange County Child Support Services: F1, F2, F3, F4, F5, F6, F7, F8, F9, F10, F11, F12, F13, F14

Orange County Mental Health Services: F5, F7, F8, F9, F10, F11, F12, F13, F14, F15, F16.

Responses Requested:

Orange County Child Support Services shall respond to: R1, R2, R3, R4, R5

Orange County Mental Health Services shall respond to: R4, R5, R6.

Fixing the Law -- Cutting Through the Tangle of Child Support and Custody



2012-2013

Fixing the Law Cutting Through the Tangle of Child Support and Custody

SUMMARY

In Orange County, child **support** and child **custody** can be and are determined by a **Family Law Court**. This court first determines child custody/visitation, which is the percentage of time allotted each parent to care for their children. Using these time allotment percentages, the Family Law Court determines the child support based on a number of financial and tax factors.¹ Under current California state law, only The Family Law Court can determine custody when the parties are in dispute.

Child Support Court is a crippled relative of the Family Law Court. Child Support Court is limited to making orders concerning child support only. However, child support cannot be ordered without an agreed custody/visitation order in place. Parents with money typically hire an attorney and utilize the Family Law Court where both custody and support can be ordered. Parents with less money seek aid from Child Support Court.

Actually, separated parents seeking the County's aid regarding child support are first directed to **Child Support Services** (CSS). In 2012, Orange County CSS serviced over 39,000 cases involving current child support.² Of these, about 15,000 were referred to the Child Support Court for resolution.³ How many of those were sent to the Family Law Court for custody determination is unknown.

Faced with the legal impossibility of advocating child support orders without first determining child custody, significantly handicaps CSS' ability to help parents resolve parenting issues which determine support. If the parties object to the CSS suggested support order, they may take the issue to a Child Support Court.⁴ Unfortunately, neither does the Child Support Court have authority to order child custody. In Orange County, determination of contested child support, when child custody is at issue, requires the attention of at least five court house court appearances: (1) the initial appointment with CSS, (2) an initial appearance in the Child Support Court, (3) an appointment with Court Services – Mediation, (4) then an appearance in a Family Law Court for custody determination, (5) followed by a return appearance before the Child Support Court for a support order based upon the Family Law Court's finding on custody.⁵

This study recommends the County seek new legislation enabling CSS to advocate child custody arrangements. If the parents challenged such custody, the Child Support Court, (the judiciary for CSS), would be within its bounds to rule on CSS' advocacy. This would significantly reduce the frustration and costs to parents, CSS and both Family Law Court and Child Support Court by at least two thirds.

¹ California Family Code § 4055

² Orange County Dept, of Child Support Services Caseload Profile & Impact of Settling Child Support Order Amounts in California – FFY 2012. (Page 4).

³ Figure supplied by Child Support Services research department

⁴ Child Support Court was created by California Family Code §§ 4250 through 4252.

⁵ Honest, this is not a make believe Kaufka novel.

Fixing the Law Cutting Through the Tangle of Child Support and Custody

Bouncing parents back and forth between Child support Court and Family Law Court is borne out of the promise of reimbursement by the federal government of 66% of CSS and Child Support Court costs.⁶ This amounts to millions of dollars. California currently interprets the federal promise as being limited to reimbursement for child support efforts only. An alternative approach utilized by many counties throughout the nation seeking reimbursement from the federal government is to split the cost of the Child Support Court with the federal government. Typically, a county Child Support Court will arbitrarily allot a percentage of its time to child custody (for example 20%) and the balance to child support (the remaining 80%). The county will then demand reimbursement of 66% of the 80% of at the time spent on child support. Suggesting to the court how it should utilize its child support commissioner is beyond the jurisdiction of this study.

REASON FOR STUDY

California Assembly Bill 1058 (AB 1058) was passed into law September 1996 “to expedite child support cases.”⁷ Where collection alone is at issue, AB 1058 has been successful. On the other hand, AB 1058 has failed to justly **establish** child support orders due to its limitation in first establishing child custody. Child custody is an indispensable element in setting child support in accordance with state guidelines. This study explains the shortcomings of AB 1058 and offers a solution. The solution specifically responds to the judiciary’s concern, “what can be done that is not court room time intensive?”⁸

METHOD OF INVESTIGATION

- The Grand Jury interviewed the office of Legislative Affairs for the Executive Office for the County of Orange.
- The Grand Jury met with upper management of the department of Child Support Services to gain an understanding of its operations.
- The Grand Jury reviewed federal and state code:
Federal Legislation, Title IV-D (42 USC 654 through 666),
California Family Code (FC) § 17000 et al,
California FC § 20000 et al,
California FC §§ 4050 through 4057,
California FC §§ 4250 through 4253.
- The Grand Jury reviewed the Fact Sheet July 2012 Child Support Commission and Family Law Facilitator Program.
- The Grand Jury reviewed comments from the Orange County Juvenile Justice Commission.

⁶ Title IV-D refers to Title IV-D of the Social Security Act dealing with federal support of child support specifically addressed in 42 U.S.C. 654 through 666.

⁷ The FACT SHEET, July 2012, Child Support Commissioner and Family Law Facilitator Programs is accessible at www.courts.ca.gov/documents/child-cupport.pdf.

⁸ March 6, 2012 as expressed in the Orange County Juvenile Justice Commission

Fixing the Law Cutting Through the Tangle of Child Support and Custody

BACKGROUND AND FACTS

Determination of child support is basically a function of (1) the number of children to be supported, (2) the percentage of time allotted each parent to care for the children, (3) the parents' incomes. A Family Law Court may adjudicate on all issues of family law including both custody and support. CSS, which offers its services at no charge, may advocate on child support issues only. A Child Support Court, which also offers its services at no charge, may rule on child support only. Because of the limitations of CSS (inability to advocate for **child custody**) and Child Support Court (inability to rule on **child custody**), the parents are dependent upon the Family Law Court to determine child custody when it is in dispute. This means that even if parents seek the free services of CSS and Child Support Court, they may be forced to set aside action in CSS and Child Support Court and make a side trip to the Family Law Court for a ruling on contested custody before proceeding with CSS or the Child Support Court. This is no small matter. Tens of thousands, if not hundreds of thousands of dollars in child support may revolve around the custody issue throughout the term of a child support order.

Whereas **CSS** provides free counsel and **Child Support Court** provides a free hearing to mothers and fathers, generally without benefit of an attorney, a Family Law Court is a room full of attorneys. It would be difficult to seek justice here for less than \$5,000 per contesting parent considering filing fees and minimal attorney fees. Furthermore, the cost to support the Family Law Courts far exceeds the filing fees. Cynically, the citizens of Orange County could ignore these costs as they are paid by the state. On the other hand, the state money allocated to run Orange County courts is limited and has resulted in the closure of one of the three Child Support Courts in order to finance courts bearing a higher priority.

An example of the morass of action resulting from limitations placed on CSS and the Child Support Court is as follows:

1. On April 1st, a single mother with two children fathered by one man comes to CSS seeking a child support order. For simplicity, we will assume paternity has already been established.
2. CSS will ask the mother to complete under penalty of perjury an Income and Expense Declaration (I&E)⁹. The I&E illustrates:
 - a. The mother's income -- \$2,000 per month,
 - b. The father's income according to the mother -- \$3,000 per month
 - c. The mother's custodial time with the children to be 95%.
3. On April 10, using the mother's I&E declaration, CSS sends the father a proposed child support order for \$898 per month.¹⁰ Included in the documents

⁹ An Income and Expense Declaration is a Judicial Council form (FL-150). Mother's example is attached as Exhibit A.

¹⁰ The proposed child support order was determined in accordance with state guidelines established by California FC § 4055 reduced to a ledger attached as Exhibit B.

Fixing the Law Cutting Through the Tangle of Child Support and Custody

sent to the father is the mother's I&E. The father is notified that he has 30 days to respond or the proposed order will automatically go into force with the authority of law.

4. On May 1, a very angry father visits CSS claiming that the mother had been a bit careless with the truth. At CSS' invitation, the father completes his own I&E under penalty of perjury. He doesn't argue with the mother's representation of the parties' income. Rather he claims on page 4 of the I&E that he has custody of the children at least 50% of the time. He explains that he picks the children up every evening after his day job is done and cares for the children while the mother works as a waitress. He says he feeds them, tucks them into bed and returns them to the mother every morning on his way to work.
5. When the parties cannot reach accord on child custody, the telling issue for support, CSS has no option but to refer the parents to the judge at Child Support Court. CSS is good enough to set up the court date for July 1.
6. On June 25, the mother gets ill and the July 1 court date is reset for August 15.
7. On August 15, the Child Support Court hears the matter. It makes no decision because it is missing a credible factor, that being the custody time share allotted each parent. The court suggests the parents go to Family Law Court for such a ruling.
8. On August 25, the father files for an Order to Show Cause hearing before a Family Law Court. In so doing he files a Fee Waiver hoping to avoid the \$435 filing fee. (Maybe the court will get \$435 and maybe not.) The father is granted a court date of October 1. The father serves the court notice on the mother.
9. On September 10, the mother files her response with the court including her Fee Waiver request. (This is another \$435 that the court may never see.)
10. On October 1, the mother and the father both show up at court. The court requests the mediation report which doesn't exist because neither the mother nor the father had an attorney to tell them about mediation¹¹. The Family Law Court continues the case to November 1 so the parents can go to mediation on October 15.
11. The parents attend mediation to no avail. They cannot agree on custody.
12. On November 1, the mother and the father argue their cases before the judge. The Family Law Court makes a ruling that the father has 40% custody of the children.
13. On November 10, the couple returns to CSS with the Family Law Court order in hand. Neither parent is satisfied with CSS' proposed child support order. A 40% custody time share to the father yields guideline support of \$311 per month (See Appendix C).
14. On Jan 3, Child Support Court makes an order for \$311 (See Exhibit C).

If this was a misery to read, consider the 10 months of torture visited on these parents held captive to the California system of wielding the law in the CSS/Child

¹¹ All family law cases involving custody must be heard by Court Services Mediation prior to presentation of before the court. It is the court's attempt to help parents settle matters on their own terms rather than those dictated from the judge. FC § 3170

Fixing the Law Cutting Through the Tangle of Child Support and Custody

Support Court arena under the auspices of AB1058. THIS IS NOT JUSTICE! Attorneys at CSS feel confident that given the authority to council mothers and fathers regarding child custody, they would be successful in resolving a very significant percentage of the 15,000 cases resigned to the courts – both the Child Support Court and the Family Law Court. Steps 5 through 14 above could often be eliminated. This would reduce judiciary costs significantly. Whether the state would allow the County to keep the savings is another issue.

The federal government does not intend to torture mothers and fathers nor exacerbate the cost of making child support orders. 42 U.S.C. 666(d) specifically **exempts** the state from procedures which are **not effective** and **efficient** in the enforcement of state guidelines for child support¹²

In most cases, the weight and inertia of the system defeats the appeal for justice by the parents and children concerned. Faced with the option of (1) accepting an arbitrary custody arrangement so as to establish a support order or (2) going through a tortuous process, most parents surrender to a custody arrangement having little to do with either parents' desires or the best interest of the child.¹³ From the perspective of getting the fiber through the cotton gin, the current system works.

The magnitude of the finances and emotions of parents in the throes of eking out a child custody and support arrangement is a major life changing event – an event that CSS gives due respect. CSS scheduled over 17,000 court appearances for over 9,000 families over the past 12 months. Of those, over 11,000 were initial filings; and, 6,000 were continuances. This action was expensive. To put this in other terms, there are about 250 court days available a year. Seventeen thousand court calls divided by 250 days means the court has to address about 68 cases a day. That means at least one court room, one judge, a couple of clerks, a bailiff, a CSS attorney and her support staff are needed. To be conservative, the study assumes the parties are all self-represented (i.e. they have no attorneys). It would be nearly impossible to put an actual price tag on this action; but, CSS indicated that avoidance of these court filings to any degree would be a significant savings to both the CSS and the Child Support Court. Giving CSS the ability to recommend child custody as opposed to court action would help tremendously. **This is not to infer for a moment that parents could not avail themselves to the courts if unhappy with CSS recommendations.**¹⁴

¹² This is to state 42 U.S.C. 666(d) in positive terms rather than the double negative of the code.

¹³ To most people, a court appearance is akin to meeting with the inquisitor of the Spanish Inquisition. This is not meant as hyperbole, but the reality of the quest for justice in the family law arena.

¹⁴ Court filing statistics provided by Orange County Department of Child Support Services.

Fixing the Law Cutting Through the Tangle of Child Support and Custody

Limitations of Child Support Services and Child Support Courts

CSS was created by California Family Code § 17202:

“The department [CSS] is hereby designated the single organizational unit whose duty it shall be to administer the Title IV-D state plan for securing child and spousal support, medical support, and determining paternity...”¹⁵

Before the creation of CSS, collection of child support was left to the Orange County District Attorney. All child support action had to be dragged through the Superior Court system. CSS, created as an agency in the executive branch of state government, was granted powers to act independently of the court system in much the same way as the Internal Revenue Service (IRS). The IRS can calculate tax liabilities including interest and penalties and use its power to lien and levy personal accounts to collect its due. Likewise, CSS is empowered to calculate child support, and interest and take whatever steps are necessary to enforce the court’s order and collect the money. CSS orders are subject to judicial review by a parent before the Child Support Court in a similar manner as a taxpayer has the right to be heard by the Tax Court if he/she feels an order is unjust.

In accordance with FC § 17208:

“[CSS] shall reduce the cost of and increase the speed and efficiency of, child support enforcement operations. It is the intent of the Legislature to operate child support enforcement program through [the county CSS].”

Child Support Court was created by California Family Code 4252(b)(2)(a):

“Commencing July 1, 1997, each superior court shall provide sufficient commissioners to hear Title IV-D child support cases filed by the local child support agency... pursuant to Section 17400, for an order to establish, modify, or enforce child support...”

Title IV-D refers to Title IV-D of the Social Security Act.¹⁶ The purpose of IV-D is to stop the bleeding of welfare costs used to support single mothers and children. Support of needy mothers was created under a welfare program known as Aid for Families with Dependent Children (AFDC). It was created by Congress in 1935 and continued until 1996 when Congress replaced it with Temporary Assistance to Needy Families (TANF).¹⁷ Title IV-D’s intent is to place financial responsibility for these needy mothers and children on the men who fathered the children. The federal law put the burden of enforcing collection on the states.¹⁸ To finance the costs of establishing a

¹⁵ CSS limits collection of spousal support to cases where spousal support is integrated with child support into “family support.” Family Code § 4501. A family support order is enforceable in the same manner and to the same extent as a child support order.

¹⁶ Title 42, Public Health and Welfare

¹⁷ The difference between AFDC and TANF is beyond the bounds of this report. Though claimed to be a horse of a different color, it is still a horse.

¹⁸ 42 U.S.C. 666(a)

Fixing the Law Cutting Through the Tangle of Child Support and Custody

child support collection program (CSS and the Child Support Court), the federal government reimbursed 66% of the states' expenses, provided the state pays the remaining 34%.¹⁹ Although the federal government has a financial interest in replacing TANF costs with parent-paid child support, it has no interest in financing the states' family law courts neither does the federal government have any constitutional jurisdiction to meddle in family affairs of the citizens of the states. It is therefore understandable that the federal government limits its support to the collection of child support and leaves all other family law issues to the states.

Orange County would stand to lose many millions of dollars of federal support²⁰ if the federal government interpreted County CSS and/or the Child Support Court action on child custody outside the specific guidelines of 42 U.S.C. 654, 655 and 666 which defines the County's authority to make support orders. Fortunately 42 U.S.C 666(a)(10) and 42 U.S.C. 666(d) do authorize determination of child custody in connection with support orders.

A Reasonable Interpretation of Title IV-D

This Grand Jury, and some legal minds in the County interpret federal law as permitting custody and visitation orders as a necessary part of making support orders. 42 U.S.C. 666(a)(10) states in a redacted version:

“(a) ...each State must have in effect laws requiring the following procedures... (10) Review and adjustment of support orders upon request... of either parent...taking into account the best interest of the child involved – (I) review and adjust the order ...pursuant to section 667(a)...”

42 U.S.C. 667(a) **mandates** such a review of child support be in accordance with state guidelines (California FC §§ 4050 through, 4057) which in turn mandate the inclusion of child custody percentages between parents.

42 U.S.C. 666(d) **exempts** the state from, “the use of any procedure or procedures...[which]... will not increase the effectiveness and efficiency of the state child support enforcement program...”

This begs to be interpreted such that the “effectiveness and efficiency” of collecting child support is absolutely dependent upon the simultaneous determination and ordering of child custody when making child support orders.

Nowhere in Title IV-D can this Grand Jury find language that denies CSS from advocating child custody. On the contrary, 42 U.S.C. 666(a)(10), 42 U.S.C. 667(a) coupled with 42 U.S.C. 666(d) is explicit in directing CSS to follow state guidelines in

¹⁹ 42 U.S.C. 655(a)

²⁰ The federal government contributed over \$55 million to support CSS in fiscal year 2011/2012.

Fixing the Law Cutting Through the Tangle of Child Support and Custody

making child support orders. California Family Code § 4055 specifically mandates consideration of child custody in child support calculation:

“(a) The ...guideline for determining child support orders is...[among other factors]:

(D)...approximate percentage of time that the high earner has or will have primary physical responsibility for the children...”

These four codes (42 U.S.C. 666(a)(10), 42 U.S.C. 666(d) & 42 U.S.C. 667(a) and California FC § 4055), tied together by reference for total adherence of the law, mandate CSS consider child custody in order to advocate child support orders.

The Solution – New Legislation

CSS needs legislative authority specifically empowering it to mediate child custody orders. With such authority, it could openly and intelligently present its orders to the Child Support Court for adjudication as necessary.

The Child Support Court is to CSS as Tax Court is to the IRS. California FC § 4250(b) states in pertinent part:

“(b)...it is the intent of the legislature to: (1) provide for commissioners to hear child support cases being enforced by the local child support agency [CSS].”

In sequence, California FC § 4251 states:

“(b)...All actions or proceedings filed by the local child support agency [CSS] in a support action or proceeding in which enforcement services are being provided pursuant to 17400 for an order to **establish, modify** (emphasis added) or enforce child ...support...shall be referred for hearing to a child support commissioner...”

It follows that if CSS were specifically granted the authority to advocate for child custody, Child Support Court must rule on child custody. As a matter of fact, CSS advocates for custody orders daily. First it utilizes the judicial council form FL-150 (Income and Expense Declaration).²¹ On page 4, item 16, each parent is required to declare how much time he or she cares for the children (see Exhibit A). Second, California Department of Child Support Services sponsors a web site with a link to calculate child support. On the second page of the calculator is the question, “time with parent 1(%)”²² “Time with parent” is a custody issue. Pretending that custody is not

²¹ AB 1058 advocated the Judicial Council prepare simple forms to determine child support. FL-150 was thus developed.

²² The web site can be reached through Google, “California Department of Child Support Services” then link to “Calculate Child Support”

Fixing the Law Cutting Through the Tangle of Child Support and Custody

currently being considered by CSS and Child Support Court is ridiculous and serves no one.

As a matter of federal law, as a matter of fact, and as a matter of practicality, custody is already on the table. Here in Orange County, **Custody is the elephant in the room.**

The call for custody/visitation mediation and orders by CSS is not a mere local whisper. The Federal Office of Child Support Enforcement out of Washington D.C. is prompting states to empower their child support agencies to aid parents in visitation and custody issues. On April 15, 2013, Federal Office of Child Support Enforcement advanced the **Child Support and Fatherhood Initiative in the Administration's FY 2014 Budget**. Among other things, the initiative proposes that:

- [All states] establish **access and visitation** (emphasis added) responsibilities in all initial child support orders, just as custody arrangements are typically settled at the same time divorces are finalized.
- Federal resources are [to be] made available to states that choose to include **parenting time responsibilities** (emphasis added) in initial child support orders beginning in FY 2014 and all states are required to include parenting time responsibilities in all new child support orders beginning in FY 2019.²³

Prompting Orange County to seek state legislation to empower CSS to include custody and visitation in its proposed orders is all but insignificant. The Federal Government, from whom millions of dollars pass to the compliant states, will almost certainly be mandating such changes as a contingency for the continued flow of those millions. The Federal Office of Child Support Enforcement's rationale for including visitation and custody in CSS orders is that fathers who participate in the lives of their children pay support more consistently than those fathers who don't. This is the same conclusion heralded by the Orange County 2012-2013 Grand Jury study titled "*BEST INTEREST OF THE CHILD*" *Lost Child Support Cost \$1.3 Billion*.²⁴

Both this report and the Grand Jury's study, "*Best Interest of the Child...*" were motivated by the leadership of CSS. That CSS leadership and the federal government are in such agreement bodes well for the future of financing the County's youth as well as including paternal (do we dare say "love") in the formula.

In any event, California Family Code § 17400(a)(d)(g) must be amended as **shown below in pertinent part**:

²³ Office of Child Support Enforcement, <http://www.acf.hhs.gov/programs/css/resource/child-support-and-fatherhood-initiative-in-the-administrations-fy-2014>

²⁴ http://www.ocgrandjury.org/pdfs/2012_2013_reports/BestInterestofChild021513.pdf

Fixing the Law Cutting Through the Tangle of Child Support and Custody

FAMILY CODE Section 17400

- (a) Each county shall maintain a local child support agency, as specified in Section 17304, that shall have the responsibility for promptly and effectively establishing, modifying, and enforcing child support obligations, including medical support, enforcing spousal support orders established by a court of competent jurisdiction, and determining paternity in the case of a child born out of wedlock. ***The local child support agency must determine the percentage of time each parent or pertinent party has custody of the children in order to determine child support in accordance with state guidelines beginning with Family Code section 4050.*** ...
- (d) (1) The Judicial Council, in consultation with the department and representatives of the California Family Support Council, the Senate Committee on Judiciary, the Assembly Committee on Judiciary, and a legal services organization providing representation on child support matters, shall develop simplified summons, complaint, and answer forms for any action for support brought pursuant to this section or Section 17404 ***including a declaration as to the percentage of time the declarant has custody of the pertinent children.*** The Judicial Council may combine the summons and complaint in a single form.
- (2) The simplified complaint form shall provide notice of the amount of child support that is sought pursuant to the guidelines set forth in Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9 based upon the income or income history of the support obligor ***and the percent of time the obligor has custody of the child(ren)*** as known to the local child support agency. If the support obligor's income or income history is unknown to the local child support agency, the complaint shall inform the support obligor that income shall be presumed to be the amount of the minimum wage, at 40 hours per week, established by the Industrial Welfare Commission pursuant to Section 1182.11 of the Labor Code unless information concerning the support obligor's income is provided to the court. ***If the support obligor's custody time with the child(ren) is unknown to the local child support agency, the obligor's time share shall be deemed zero.*** ...
- (3) (A) The simplified answer form shall be written in simple English and shall permit a defendant to answer and raise defenses by checking applicable boxes. The answer form shall include instructions for completion of the form and instructions for proper filing of the answer. (B) The answer form shall be accompanied by a blank income and expense declaration or simplified financial statement and instructions on how to complete the financial forms. ***Both of these shall include space for the defendant to declare what percent of the children's time they are in his/her custody.*** ...
- (g) (1) In any action to establish a child support order brought by the local child support agency in the performance of duties under this section, the local child support agency may make a motion for an order effective during the pendency of that action, for the ***custody,*** support, maintenance, and education of the child or children that are the subject of the action. This order shall be referred to as an order for temporary support. This order has the same force and effect as a like or similar order under this code....

Fixing the Law

Cutting Through the Tangle of Child Support and Custody

Making New Law

Proposing, drafting and ultimately gaining passage of any legislation is not within the Grand Jury's purview; however, the entity which would most profit from such legislation would be CSS. The Grand Jury's proposed language to amend FC § 17400 are roughly drafted. This Grand Jury opines that there are fine legal minds within Orange County CSS as well as other counties that might refine the proposed language.

FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2012/13 Grand Jury requests responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of child support orders and parenting in Orange County, the 2012/13 Orange County Grand Jury has arrived at ten (10) principal findings as follows:

- F1 CSS is tasked to establish child support orders in accordance with state guidelines.
- F2 Child Support Court is tasked to make orders setting child support in accordance with state guidelines.
- F3 State guidelines for child support require determination of the percentage of child custody/visitation allotted each parent.
- F4 Orange County's interpretation of both IV-D and California Family Code § 17000 et al does NOT permit CSS to make orders regarding parental custody.
- F5 Child Support Court is the judiciary organ created to adjudicate issues of child support brought by CSS. FC § 4252 does NOT deny CSS from suggesting orders regarding child custody.
- F6 Denial of either CSS or Child Support Court to make custody orders creates an intolerable hardship on the parents, their children and the California Superior Court system by requiring parents go to Family Law Court to get a custody order and then return to the Child Support Court for a support order.
- F7 An amendment to FC § 17400 specifically authorizing CSS to advocate custody orders would greatly improve both CSS and Child Support Court's ability to efficiently make child support orders as they are mandated to do by IV-D.
- F8 The County of Orange is in a position to seek legislation authorizing CSS to advocate for child custody orders.
- F9 Continued denial to CSS and Child Support Court to make child support orders is an absolute waste of human effort.
- F10 The federal OFFICE OF CHILD SUPPORT ENFORCEMENT is proposing inclusion of custody/visitation orders in all CSS support orders by 2014 and mandating the same by 2019.

Fixing the Law Cutting Through the Tangle of Child Support and Custody

RECOMMENDATIONS

In accordance with California Penal Code Section 933 and 933.05, the 2012/13 Grand Jury requires a response from the agency affected by the recommendation presented in this section. The response is to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of child support and parenting in Orange County, the 2012/13 Orange County Grand Jury makes the following recommendation.

- R1 CSS should initiate a legislative amendment to FC § 17400 by adding language which would enable CSS to advocate child custody issues before the Child Support Court in order to obtain equitable child support orders. Findings F1, F2, F3, F4, F5, F6, F7, F8, F9, F10.

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 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.

Fixing the Law Cutting Through the Tangle of Child Support and Custody

(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 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 Requested:

Orange County Child Support Services: F1, F2, F3, F4, F5, F6, F7, F8, F9, F10.

Responses Requested:

Orange County Child Support Services R1

Fixing the Law Cutting Through the Tangle of Child Support and Custody

Exhibit A

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) Mother (Pro Per) 123 Any Street Santa Ana, CA 92701 TELEPHONE NO: E-MAIL ADDRESS (Optional) (714)333-7777 ATTORNEY FOR (Name) Pro per	FL-150 FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange STREET ADDRESS 341 The City Dr. MAILING ADDRESS CITY AND ZIP CODE Orange, CA 92868 BRANCH NAME Family Law	
PETITIONER/PLAINTIFF: Mother RESPONDENT/DEFENDANT: Father OTHER PARENT/CLAIMANT: Child Support Service	
INCOME AND EXPENSE DECLARATION	CASE NUMBER P-001578

1. **Employment** (Give information on your current job or, if you're unemployed, your most recent job.)

Attach copies of your pay stubs for last two months (black out social security numbers).

- a. Employer: Good Food Restaurant
- b. Employer's address: 456 Good Street
- c. Employer's phone number:
- d. Occupation: Waitress
- e. Date job started: Jan 2, 2013
- f. If unemployed, date job ended:
- g. I work about 40 hours per week.
- h. I get paid \$ 1300 gross (before taxes) per month per week per hour.

(If you have more than one job, attach an 8½-by-11-inch sheet of paper and list the same information as above for your other jobs. Write "Question 1—Other Jobs" at the top.)

2. **Age and education**

- a. My age is (specify): 25
- b. I have completed high school or the equivalent: Yes No If no, highest grade completed (specify):
- c. Number of years of college completed (specify): Degree(s) obtained (specify):
- d. Number of years of graduate school completed (specify): Degree(s) obtained (specify):
- e. I have: professional/occupational license(s) (specify):
 vocational training (specify):

3. **Tax information**

- a. I last filed taxes for tax year (specify year): 2012
- b. My tax filing status is single head of household married, filing separately
 married, filing jointly with (specify name):
- c. I file state tax returns in California other (specify state):
- d. I claim the following number of exemptions (including myself) on my taxes (specify): 3

4. **Other party's income.** I estimate the gross monthly income (before taxes) of the other party in this case at (specify): \$ 3000
 This estimate is based on (explain): income we shared when living together in 2012

Father's income

(If you need more space to answer any questions on this form, attach an 8½-by-11-inch sheet of paper and write the question number before your answer.) Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the information contained on all pages of this form and any attachments is true and correct.

Date:

 (TYPE OR PRINT NAME) _____
 (SIGNATURE OF DECLARANT)

Fixing the Law Cutting Through the Tangle of Child Support and Custody

PETITIONER/PLAINTIFF: Mother RESPONDENT/DEFENDANT: Father OTHER PARENT/CLAIMANT: Child Support Service	CASE NUMBER: P-001578
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12. The following people live with me:

Name	Age	How the person is related to me? (ex: son)	That person's gross monthly income	Pays some of the household expenses?
a. Junior	3	son	0	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
b. Sis	5	daughter	0	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
c. Grandma	55	mother	2000	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
d.				<input type="checkbox"/> Yes <input type="checkbox"/> No
e.				<input type="checkbox"/> Yes <input type="checkbox"/> No

13. Average monthly expenses Estimated expenses Actual expenses Proposed needs

a. Home:

(1) Rent or mortgage ... \$ 500

If mortgage:

(a) average principal: \$ _____

(b) average interest: \$ _____

(2) Real property taxes \$ _____

(3) Homeowner's or renter's insurance (if not included above) \$ _____

(4) Maintenance and repair \$ _____

b. Health-care costs not paid by insurance... \$ _____

c. Child care \$ _____

d. Groceries and household supplies \$ 400

e. Eating out \$ 25

f. Utilities (gas, electric, water, trash) \$ 0

g. Telephone, cell phone, and e-mail \$ 75

h. Laundry and cleaning \$ _____

i. Clothes \$ 100

j. Education \$ _____

k. Entertainment, gifts, and vacation \$ 100

l. Auto expenses and transportation (insurance, gas, repairs, bus, etc.) \$ 300

m. Insurance (life, accident, etc.; do not include auto, home, or health insurance) ... \$ _____

n. Savings and investments \$ _____

o. Charitable contributions \$ _____

p. Monthly payments listed in item 14 (itemize below in 14 and insert total here) .. \$ _____

q. Other (specify): \$ 200

r. **TOTAL EXPENSES** (a–q) (do not add in the amounts in a(1)(a) and (b)) \$ 1800

s. Amount of expenses paid by others \$ _____

14. Installment payments and debts not listed above

Paid to	For	Amount	Balance	Date of last payment
Visa	consumables	\$ 200	\$ 3500	over due
		\$	\$	
		\$	\$	
		\$	\$	
		\$	\$	

15. Attorney fees (This is required if either party is requesting attorney fees.):

- a. To date, I have paid my attorney this amount for fees and costs (specify): \$ _____
- b. The source of this money was (specify): _____
- c. I still owe the following fees and costs to my attorney (specify total owed): \$ _____
- d. My attorney's hourly rate is (specify): \$ _____

I confirm this fee arrangement.

Date: _____

(TYPE OR PRINT NAME OF ATTORNEY)

(SIGNATURE OF ATTORNEY)

Fixing the Law Cutting Through the Tangle of Child Support and Custody

FL-150

PETITIONER/PLAINTIFF: Mother RESPONDENT/DEFENDANT: Father OTHER PARENT/CLAIMANT: Child Support Service	CASE NUMBER P-001578
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CHILD SUPPORT INFORMATION

(NOTE: Fill out this page only if your case involves child support.)

16. Number of children

- a. I have (specify number): 2 children under the age of 18 with the other parent in this case.
- b. The children spend 95 percent of their time with me and 5 percent of their time with the other parent.
 (If you're not sure about percentage or it has not been agreed on, please describe your parenting schedule here.)

Mother's
custody
time

Father's
custody
time

— alleged
by Mother

17. Children's health-care expenses

- a. I do I do not have health insurance available to me for the children through my job.
- b. Name of insurance company:
- c. Address of insurance company:
- d. The monthly cost for the **children's** health insurance is or would be (specify): \$
 (Do not include the amount your employer pays.)

18. Additional expenses for the children in this case

	Amount per month
a. Child care so I can work or get job training	\$ _____
b. Children's health care not covered by insurance	\$ _____
c. Travel expenses for visitation	\$ _____
d. Children's educational or other special needs (specify below):	\$ _____

19. Special hardships. I ask the court to consider the following special financial circumstances (attach documentation of any item listed here, including court orders):

	Amount per month	For how many months?
a. Extraordinary health expenses not included in 18b	\$ _____	_____
b. Major losses not covered by insurance (examples: fire, theft, other insured loss)	\$ _____	_____
c. (1) Expenses for my minor children who are from other relationships and are living with me	\$ _____	_____
(2) Names and ages of those children (specify):		

(3) Child support I receive for those children: \$ _____

The expenses listed in a, b, and c create an extreme financial hardship because (explain):

20. Other information I want the court to know concerning support in my case (specify):

Fixing the Law Cutting Through the Tangle of Child Support and Custody

Exhibit B

2007

DissoMaster 2007-1

page 1

alleged custody
time for Father

DissoMaster Data Screen Monthly Figures

Input Data	Father	Mother	Guideline (2007)	Cash Flow Analysis	GdIn.	Prop.
Party Info	Father	Mother	Nets (adjusted)	Comb. net spendable	4559	4630
Number of children	0	2	Father	Percent change	0%	1.6%
<u>% time with NCP</u>	<u>5.00</u>	0.00	Mother	Father, payor of CS, Prop. CS		
Filing Status	Single	HH/MLA	Total	4559	Payment cost	898 722
# federal exemptions	1*	3*	Support		Net spendable income	1467 1643
Wages + salary	3000	2000	Presumed CS	898	Change from guideline	0 176
Self-employment income	0	0	Basic CS	898	% of combined spendable	32.2% 35.5%
Other taxable income	0	0	Add-ons	0	% of saving over guideline	0% 248.1%
TANF plus CS received	0	0	Per Kid		Total Taxes	635 334
Other nontaxable income	0	0	Child 1	334	Dep. exemptions value	0 176
New-spouse income	0	0	Child 2	564	# withholding allowances	1 7
Wages + Salary	0	0	Spousal	blocke	Net wage paycheck	2326 2623
Self-employment income	0	0	Support	d	Mother	
SS paid other marraige	0	0	Total	898	Payment benefit	898 793
Retirement contrib. if ATI	0	0	Proposed, Tactic 9		Net spendable income	3092 2987
Required union dues	0	0	Presumed CS	1022	Change from guideline	0 -105
Nec. Job-related exp.	0	0	S. Clara SS	0	% of combined spendable	67.8% 64.5%
Adj. income (ATI)	0	0	Total	1022	% of saving over guideline	0% -148.1%
SS paid other marriage	0	0	Comb. Savings	71	Total Taxes	-194 36
CS paid other relationship	0	0	Total releases		Dep. exemptions value	0 -105
Health insurance	0	0	to Father	2	# withholding allowances	6(w5) 2(w5)
Itemized deductions	0	0	Default Case Settings		Net wage paycheck	1899 1753
Other medical expenses	0	0	Default Tax Settings			
Property tax expenses	0	0				
Ded. interest expense	0	0				
Charitable contribution	0	0				
Miscellaneous itemized	0	0				
Required union dues	0	0				
Mandatory retirement	0	0				
Hardship deduction	0*	0*				
Other guideline deductions	0	0				
AMT Info (IRS Form 6251)	0	0				
Child support add-ons	0	0				

This is a computer
rendition of the formula
dictated by CA-FC § 4055

Fixing the Law Cutting Through the Tangle of Child Support and Custody

Exhibit C

2007

DissoMaster 2007-1

page 1

Ordered custody
for Father

DissoMaster Data Screen Monthly Figures

Input Data	Father	Mother	Guideline (2007)	Cash Flow Analysis	Gdln.	Prop.
Party Info	Father	Mother	Nets (adjusted)	Comb. net spendable	4583	4639
Number of children	0	2	Father	Percent change	0%	1.2%
% time with NCP	40.00	0.00	Mother	Father, payor of CS, Prop. CS		
Filing Status	Single	HH/MLA	Total	Payment cost	311	173
# federal exemptions	1*	3*	Support	Net spendable income	2078	2216
Wages + salary	3000	2000	Presumed CS	Change from guideline	0	138
Self-employment income	0	0	Basic CS	% of combined spendable	45.3%	47.8%
Other taxable income	0	0	Add-ons	% of saving over guideline	0%	246.4%
TANF plus CS received	0	0	Per Kid	Total Taxes	611	325
Other nontaxable income	0	0	Child 1	Dep. exemptions value	0	138
New-spouse income	0	0	Child 2	# withholding allowances	1	7
Wages + Salary	0	0	Spousal	Net wage paycheck	2326	2623
Self-employment income	0	0	Support	Mother		
SS paid other marriage	0	0	Total	Payment benefit	311	229
Retirement contrib. if ATI	0	0	Proposed, Tactic 9	Net spendable income	2505	2423
Required union dues	0	0	Presumed CS	Change from guideline	0	-82
Nec. Job-related exp.	0	0	S. Clara SS	% of combined spendable	54.7%	52.2%
Adj. income (ATI)	0	0	Total	% of saving over guideline	0%	-146.4%
SS paid other marriage	0	0	Comb. Savings	Total Taxes	-194	36
CS paid other relationship	0	0	Total releases to Father	Dep. exemptions value	0	-82
Health insurance	0	0		# withholding allowances	6(w5)	2(w5)
Itemized deductions	0	0	Default Case Settings	Net wage paycheck	1899	1753
Other medical expenses	0	0	Default Tax Settings			
Property tax expenses	0	0				
Ded. interest expense	0	0				
Charitable contribution	0	0				
Miscellaneous itemized	0	0				
Required union dues	0	0				
Mandatory retirement	0	0				
Hardship deduction	0*	0*				
Other guideline deductions	0	0				
AMT Info (IRS Form 6251)	0	0				
Child support add-ons	0	0				

Detention Facilities Part I: Adult Jails



2012-2013

Detention Facilities: Part I - Adult Jails

SUMMARY

In accordance with the requirements of the California Penal Code Section 919(b) the 2012-2013 Orange County Grand Jury has conducted an inspection of the detention facilities in Orange County. The report is divided into two parts: Part I covers the adult jails operated by the Orange County Sheriff's Department; Part II covers the juvenile detention facilities operated by the Orange County Probation Department.

Assembly Bill 109 (AB 109) has had an impact on the jails. AB 109 was implemented to take low level offenders out of state prisons and place them in county jails. In the first quarter of 2013 approximately 950 beds per day were occupied by AB 109 inmates. State funds will be divided among the counties depending on how well the county lowers re-incarcerations for these particular inmates. Competition for state funds among the counties will be fierce and Orange County is doing various things to increase its chance to obtain as large a share as possible.

As part of the investigation the Grand Jury visited and observed the Commissary operation. The Commissary delivers to each of the five county jails three times per week.

The Grand Jury investigated the salaries of the sworn and professional staff in the jails. The salary numbers represent all the Sworn Employees and Professional Staff but do not include the Sheriff and other upper management.

The Grand Jury observed the video systems at each jail. These systems range from severely outdated VHS tape technology to touch screen operation of doors. Each jail has a different system and each was studied individually.

The four facilities housing juvenile offenders, operated by the Orange County Probation Department, were reviewed in the 2012-2013 Grand Jury report "Detention Facilities Report: Part II – Juvenile. How do we know if we are taking care of our at risk Juveniles."

REASON FOR STUDY

Penal Code Section 919(b) states - "The Grand Jury shall inquire into the condition and management of the public prisons within the county." The 2012-2013 Grand Jury chose to focus on the five county operated facilities. This study covers the five jails that house adult inmates operated by the Orange County Sheriff's Department. The five jails are all classified by the Correctional Standards Authority as *Type II* maximum security level facilities. This allows the jails to house sentenced and unsentenced inmates.

Detention Facilities: Part I - Adult Jails

METHOD OF INVESTIGATION

Civil investigations by the Grand Jury are secret and the confidentiality of the proceedings must be maintained to ensure the integrity of the Jury. Failure to maintain confidentiality can result in a misdemeanor charge. The Grand Jury obtains signed admonitions from interviewees agreeing to maintain confidentiality of matters discussed. Failure to do so is a misdemeanor. The State Attorney General produced an opinion on June 6, 2003 (No. 02-1108) regarding a Grand Jury's authority to admonish those interviewed.¹ The opinion confirmed:

1. The authority to admonish,
2. Contempt of court being the consequence of ignoring such admonishment,
3. The validity of the particular language used by the Grand Jury's admonishment.

During the gathering of information for this study, the Grand Jury discovered that many individuals from positions of high authority to the rank and file employees were unaware of the admonition process. It caused, in varying degrees, apprehension among those interviewed. Some, who were interviewed, said that their bosses had specifically requested they report back what they told the Grand Jury, and to the degree possible, what the Grand Jury was investigating. This, at the least would cool what the interviewee might say, and at worst, defeat the very purpose of the interview.

To carry out the mandated inspection duty with respect to the county jails, the Grand Jury engaged in the following activities:

- Visited each of the facilities twice; once for an overview of the operations and the second for a more detailed inspection.
- Visited the Commissary twice; once for an overview of the operations and the second for a more detailed inspection.
- Sent extensive questionnaires to the Captains of each of the jail facilities.
- Reviewed the operation of Health Care Services.
- Reviewed the most recent inspection reports prepared by the California Standards Authority, the local fire authority and the health department.
- Reviewed the public safety realignment legislation (AB 109) that alters the criminal justice system in California.
- Reviewed the legislation (Prop 36) which authorizes re-sentencing for offenders currently serving life sentences if their third strike conviction was not serious or violent and a judge determines reducing the sentence does not pose an unreasonable risk to public safety.
- Examined budget information obtained from the Sheriff-Coroner Department Financial / Administrative Services.
- Studied the video system in each jail.

¹ 86 Ops. Cal. Atty Gen 101 (2003)

BACKGROUND AND FACTS

The Issues

Proposition 36

California Proposition 36, passed in November, 2012, authorized re-sentencing for offenders currently serving life sentences if their third strike conviction was not serious or violent and a judge determined revoking the sentence did not pose unreasonable risk to public safety. There are approximately 400 Orange County inmates in state prison that are eligible for re-sentencing. No one knows how many of these inmates would need to be housed in Orange County jails while waiting for re-sentencing. As of April 2013, Proposition 36 has not been an issue as the inmates who have requested re-sentencing have done so from state prison with no transfer to an Orange County jail required.

Assembly Bill 109 (AB 109)

In April 2011, Assembly Bill 109 (AB 109) was signed into law by Governor Brown. The purpose of AB 109 is to stop low-level offenders from cycling in and out of state prison. "Cycling these offenders through state prisons wastes money, aggravates crowded conditions, and impedes local law enforcement supervision."² No inmates currently in state prison would be transferred to county jails or released early. Instead, newly convicted low level offenders would be incarcerated in county jails instead of state prison.

The reasoning behind AB 109 is that counties are better positioned to integrate public health and social services that the state cannot. The goal is to lower both recidivism and incarcerations. The number of inmates that were returning to California state prisons was 67.5 percent.

When the bill was originally funded, Orange County received approximately \$23 million. Fifty-nine percent was allocated to the Sheriff, twenty-nine percent to Probation, nine percent to Health care services, and three percent to other law enforcement.

Eventually state funding allocations will be based on counties demonstrating the positive outcomes AB 109 was meant to achieve. The eventual measurements that will be used will be statistics on lower recidivism and increased use of cost-effective alternatives to incarceration. Of course, this is more easily said than done. Ideally a measurement system will be put in place that is standardized across all 58 counties in California. A state-wide definition of recidivism is needed to make it fair for counties to compete for future funding.

² Governor Edmund G. Brown Jr. Governor's Press Release, April 5, 2011.

Detention Facilities: Part I - Adult Jails

Efforts in Orange County have been extensive. One goal is to develop assessment tools to be used by both Inmate Services and Probation to determine what types of support or programs are suited for an individual to succeed in making life style changes. The Probation Department has opened a Daily Reporting Center. A \$200,000 grant has been obtained from the Orange County Community Corrections Partnership so the Sheriff's Department can work with local universities and other institutions to study all aspects of AB 109. The study will include, but not be limited to the following:

- defining recidivism
- the effect on cities in the county
- the impact on the court system
- developing rehabilitation programs that work
- measuring rehabilitation program success
- the effect on health care needs
- classifying inmates to identify those rehabilitation programs with the best chance for success for that class of inmate

Stanford University is also conducting a study, but it will take three to five years to collect and analyze data that will represent the impacts of AB 109. A special housing unit will be established at the James A. Musick jail as soon as possible for a new sixty day program. Four days of curriculum per week will cover topics such as parenting, job skills, and obtaining a GED. Counseling for substance abuse, domestic violence and low self-esteem will occur one day per week. The inmates will receive assistance in how to transition from jail to the community. Probation and Community Partnerships will assist in establishing housing, ongoing treatment, job opportunities and continued education.

AB 109 led to an average increase of approximately 950 beds per month in the Orange County Jails since the October, 2011 implementation. There is extensive data collection and tracking of the AB 109 inmates. On July 1, 2013, there will be a change in how AB 109 parole violators will be sentenced. Instead of their cases being handled by the parole board, they will be handled in the courts. The District Attorney will prosecute the parole violator and it is expected the Public Defender's office will see an increase in their work load representing parolees. The statutory sentencing for parolee violations will remain the same. The judiciary process to sentence such a violating parolee will increase

In order to be counted as an AB 109 inmate at sentencing, the current offense for which the inmate is convicted must be non-serious, non-violent, and non-sex-registerable felonies. However, prior serious offenses are ignored.³ These offenders are referred to as "non-non-non." Orange County is tracking four different types of AB 109 offenders. They are as follows:

³ This is Orange County Sheriff's interpretation of the law based upon analysis of serious offenses suffered by Orange County citizens.

Detention Facilities: Part I - Adult Jails

1. SPOC – State Prison Orange County. These are State of California Prisoners who would otherwise have served their sentence at a state facility who are now serving their sentence at an Orange County Jail.
2. PROL – Parole Holds. These are state prisoners released from physical custody who are managed by the State Parole offices and are returned to county custody for violations of the terms of their parole pending a parole revocation hearing. They can be held for a maximum of 180 days.
3. REVH – Post-release Community Supervision Violations. These are state prisoners released from county custody into community supervision who violate the terms of their supervised release. They can be held for a maximum of 180 days.
4. FLSH – Flash Incarceration. These are post-release community supervision prisoners returned to county custody for up to 10 days for a violation of the terms of their supervised release.⁴

In addition to parole and probation issues, the County jails are to be used as the place to incarcerate AB-109 criminals sentenced to multi year terms for new non-serious, non-violent and non-sexual felonies. The effect this will have on jail population could turn the institution from one of primarily misdemeanor violators to felons. It has already done so in other counties.⁵

Data has been gathered in Orange County since AB-109 implementation. Some of the data is a comparison of the AB 109 population to the non-AB 109 population. Other numbers review data from the previous two years to see if there are any incarceration trends having nothing to do with AB 109.

Some of the data that has come to light is as follows:

- As of August 2012, the non-AB 109 level of serious offenders was 19.2 percent. The AB 109 level of serious offenders was 39.6 percent
- As of August 2012 the non-AB 109 Protective Custody Population was 11.6 percent. The AB 109 Protective Custody Population was 17.6 percent.
- AB 109 has had more assaultive inmates, more ADA inmates, more mental issue inmates, more 2 and “3-strike” inmates, more drug incidents, and fewer suicidal inmates.
- Use of force incidents have remained about the same for both AB 109 and non-AB 109 inmates.
- For the one month period from September 2012 to October 2012 AB 109 inmates were disciplined at double the rate of non-AB 109 inmates.
- Major rule violations committed by AB 109 inmates were 31 percent fighting in jail, 20 percent possession of contraband, 15 percent failure to obey a directive, 12 percent creating a disturbance, and 22 percent other violations.

⁴ Unforeseen Consequences and Impacts – AB 109 Realignment – Orange County Sheriff’s Department presented by Lieutenant Mike McHenry

⁵ Concern over changing County jails to County felony prisons was expressed by members of the Orange County Sheriff’s Department.

Detention Facilities: Part I - Adult Jails

- Criminal reports for drug violations have dramatically increased. Two years prior to AB 109 implementation the one year increase was 25 percent. From the fall of 2011 to the fall of 2012 the increase was 108 percent. This is a total two-year increase of 156 percent.
- Criminal reports for assaults have dramatically increased. When there were no AB 109 inmates, the increase was 1 percent. From one year ago to the fall of 2012, the increase has been 48 percent. This is a total two year increase of 50 percent.
- AB 109 has financially impacted Correctional Health Services severely enough that they are researching the purchase of Stop Loss insurance to protect against spikes in hospitalization expenditures. They are finding they must provide service and track long-term and non-life threatening medical conditions not previously treated due to short county jail stays. Of particular note is that it costs \$85,000 per year to treat an inmate with Hepatitis C and there is a suspected 34 percent rate of infection in the AB 109 population.⁶

The aforementioned data does not necessarily constitute a trend. The Sheriff's department is working hard to stay ahead of the curve in both data gathering and creating programs that work. Only time will tell what the real impact of AB 109 will be in Orange County.

Immigration and Customs Enforcement (ICE) at the Orange County Jails

In August 2010, the Orange County Sheriff's Department entered into a contract with the U.S. Department of Homeland Security, ICE, to house immigration detainees in county jails. The five year contract makes a maximum of 838 beds available to ICE's Enforcement and Removal Operations. ICE handles all aspects of the detainees' immigration proceedings. The jails provide housing and services.

The ICE Detention Program is managed by a Sheriff's Lieutenant, under the direction of the Commander of Custody and Court Operations Command. In partnership with ICE, the ICE lieutenant and a staff of three sergeants, an administrative manager, and three deputy sheriffs oversee detention operations and compliance across four of the jails.

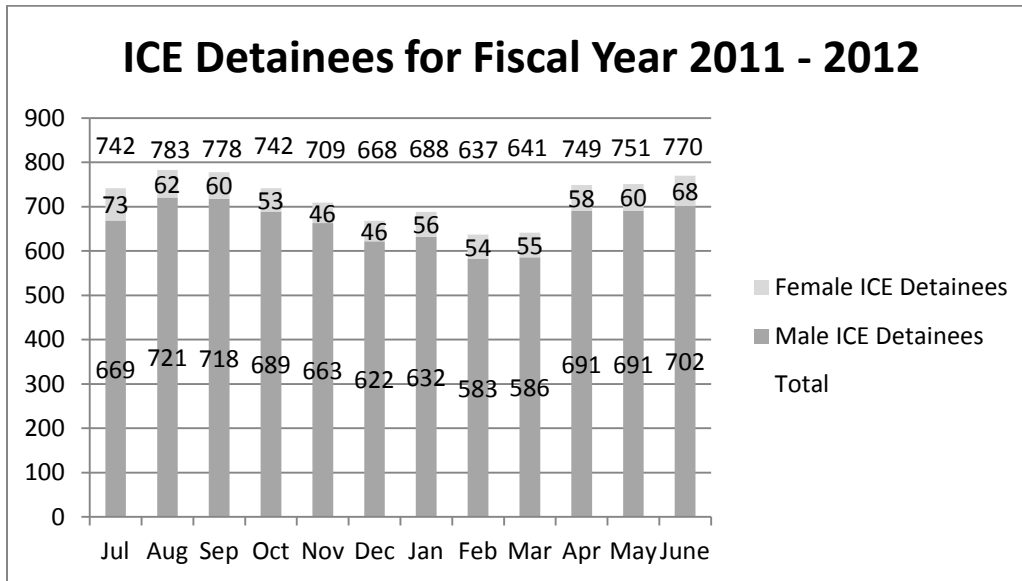
The Central Women's Jail and the Intake Release Center (IRC) can house detainees for up to 72 hours. These facilities temporarily house detainees who require a higher level of medical or mental health care and observation than is available at other jails.

The James A. Musick Jail can house 256 male and 110 female minimum security detainees. The Theo Lacy Facility can house 408 minimum security and 64 medium or maximum security male detainees. These facilities can house the detainees for the

⁶ ibid

Detention Facilities: Part I - Adult Jails

entire length of their immigration proceedings. The average ICE detainee stay in custody is approximately 60 days.



The county is paid \$118 per day for each detainee. Of that amount \$94.15 goes to the jail and \$23.85 goes to the Health Care Department. For Fiscal Year 2011 – 2012, the county received \$32.9 million for housing ICE detainees.

Overcrowding at the Orange County Jails

While working on this study, the Grand Jury reviewed the Corrections Standards Authority (CSA) report for fiscal year 2011 – 2012. This report contains information known as the Rated Capacity for each jail. Rated Capacity is supposedly the highest number of inmates that a jail can house while providing a minimum level of safety and services. In calculating this number things like cell square footage, number of showers, number of toilets and several other Title 24 (construction standards) are considered.

The data for the Orange County Jails is shown in the following table might lead one to believe the jails are extremely overcrowded.

Jail	CSA Rated Capacity	Actual Inmate Capacity
Theo Lacy	2464	3111
Intake Release Center	408	903
Men’s Jail	1219	1433
Women’s Jail	274	388
James A. Musick	713	1322

While researching this dilemma the Grand Jury found the following quote:

“[The process of calculating prison capacity] is analogous to the practice of John Dewey’s Texas farmer, who weighed his pigs by putting them on one end of a

Detention Facilities: Part I - Adult Jails

plank that was balanced in the middle, placing rocks on the plank's other end until it was level, and then guessing the weight of the rocks.”⁷

Jail population is growing but there are factors other than numbers that determine if the jail is overcrowded. The Grand Jury considered the following:

- Inmate Violence. Studies have shown that violence can raise aggression levels which can lead to an overcrowding problem. If inmate violence is controlled, more inmates can reside in the same space.
- Racial Tensions. Primarily responsible for the perception of overcrowding are among groups that are in the minority. This is especially evident when considering gang cultures.
- Age. Other studies have indicated that the incarceration of more youths who are assumed to be more pre-disposed to violence can lead to overcrowding.
- Inmate Health. Keeping individuals together in a confined space over time tends to produce stressful behavior and deterioration which can lead to overcrowding.
- Jail Management. It is important that officials are able to provide essential services to inmates. An underfunded jail may be unable to provide essential services even if the jail is half empty.⁸

The 2012 – 2013 Grand Jury concluded the capacity of an institution is not only based on physical space and inmate population. The ability and outstanding work of the professionals at the Orange County Jails, more than compensates for any deficiency in the physical facilities. It should be noted that the jails are at a high capacity and overcrowding is an issue that does need attention.

Correctional Health Services

Correctional Health Services provides a Medical Center in each County jail. All inmates are entitled to medical, dental, optical and mental health care at no cost. However, as of February 15, 2013, a \$3.00 charge for each appointment or treatment is deducted from the inmates' Commissary account. The \$3.00 fee makes a minimal contribution to the actual cost of Correctional Health Services, but, it does prevent over utilization and a free excuse to meet and socialize with other inmates at the medical dispensary.

The Medical Centers are professionally staffed by a total of 20 Physicians, 162 Nurse Practitioners, Registered Nurses and Licensed Vocational Nurses, 5 Psychiatrists as well as Dentists and Opticians capable of caring for even the more serious illnesses such as diabetes. If needed, inmates are transferred to a local hospital for examination and if necessary, treatment is given at considerable expense to the County. To aid the inmate's mobility as defined by the ADA wheelchairs, canes and crutches are available.

⁷ M. Sherman & G. Hawkins, *Imprisonment in America* 29 (1981)

⁸ *California Law Review*, Volume 7, Issue 5 *The Politics of Prison Crowding*, Jeff Bleich, 10-31-1989

Detention Facilities: Part I - Adult Jails

They are frequently damaged or destroyed by the inmates at considerable expense to the County.

Medical services complaints are the number one inmate grievance in the Nation's jails as well as Orange County's jails. The validity of these grievances is questionable and beyond the scope of this study. It appears that inmates tend to hold Correctional Health Services responsible for failure to cure the common cold, the flu and other unsolved mysteries to medical science.

Looking forward, the County is reviewing computer software designed to track inventory of drug and medicine disbursement, supplies as well as appointments, treatments, staffing schedules and training programs. Over-the-counter medications are available and sold in small doses through the Commissary. Effective January 1, 2014 the Affordable Care Act will become fully enacted and the Jails may be able to bill insurance plans for some of the charges. The effect of the Affordable Care Act with respect to the jails is currently an open question.

The Commissary

The Commissary is located in a 53,000 square foot building in Anaheim at 1530 South State College Boulevard. The Sheriff's Department purchased the building in 1998 using the Inmate Welfare Fund and owns it free and clear, relieving the Commissary of the obligation to pay rent on the building.

The Grand Jury visited the Commissary to observe its operation and was impressed with its extremely clean, well-lit appearance. It was obvious that the Commissary operates efficiently.

At the time the Grand Jury visited, inmates were permitted to purchase items from the Commissary three times per week. In order to accommodate delivery of these items to the five jails, the Commissary packaged and delivered items twice daily, six times a week. The Commissary filled approximately 413 thousand orders annually with an average cost per order of \$18.00. There were over 150 items available for purchase through the Commissary including: personal care items, pillows, hair care products, snacks, nuts and chips, beverages, candy, over-the-counter medication, writing paper, greeting cards, stamps and pencils (see Appendix A for a sampling of Commissary order forms). Top selling items were: Ramen Noodle soup, Chili soup, Picante Beef soup, Cheetos and peanut butter. The inmate had to have money in their jail account to purchase from the Commissary. If an inmate had no money in their account, they were allowed to request a Welfare Kit once a week. A Welfare Kit contained one toothbrush, one tube of toothpaste, one razor, one comb, two stamped envelopes, five pieces of writing paper and one pencil. Approximately 54 thousand Welfare Kits were provided to indigent inmates in 2011.

Detention Facilities: Part I - Adult Jails

There was one shift of assembly workers working from 6 a.m. to 4.30 p.m. six days a week filling Commissary orders. The order filling and inventory control process was computerized, with eight assembly lines used to fill orders.

The process began with a worker scanning a Commissary order form into the computer. Once the computer verified that the inmate had sufficient funds for their order, it generated an electronic and paper receipt. If an inmate did not have sufficient funds, it canceled the entire order; partial orders were not filled. Warehouse staff used the paper receipts to gather the items for the order and place them in a basket. The baskets then went through a check-out line where a worker picked up and scanned each item. The computer adjusted the receipt for each scanned item that eventually showed 'zero' after everything from the basket had been scanned. A computer also kept the Commissary electronic inventory system current with each scanned item. Workers bagged the scanned items and stapled two copies of the receipt to each bag. They then placed the bags in bins on a conveyor belt where they were transported to a staging area and loaded into trucks to be transported to the jails. Correctional Service Technicians handled the collection of orders and distributed the products by comparing the wristband of the inmate, as well as a copy of the order form, to the order. The inmate was required to sign when they either accepted or refused an order.

The Grand Jury observed inmate workers at the Commissary. They worked in the warehouse moving large packages around and were not allowed to scan or verify orders. The Grand Jury believes there is a possibility inmate workers could be further used for other aspects of the operation.

The Commissary budget for fiscal year 2011 – 2012 was \$7.5 million and the actual expenditures were \$7 million. \$500 thousand of the Commissary profit each year is used to fund Inmate Services Programs. Salaries and benefits account for \$3.1 million. There are approximately 35 full time professional staff employees and a few part time employees, including inmates from the Community Work Program. The lowest ranks of professional staff workers earn approximately \$20.00 an hour plus benefits.

The Grand Jury randomly selected several account codes and examined the accompanying account details. Although most accounts seem reasonable and in order, one account, however, attracted attention: account code 600: Clothing and Personal Supplies. The account balance was \$550 thousand, a number that seemed high for an operation the size of the Commissary. Details of account 600 were as follows:

Detention Facilities: Part I - Adult Jails

Object Code	Object Description In General Ledger	Actual Spending	Breakdown Amount	Detail of Costs Description	Resale or Business Cost
600	Clothing & Personal Supplies	\$589,104.67			
			\$2,378.33	Uniforms	Business Cost
			\$2,376.56	Latex Gloves	Business Cost
			\$140,000.00	Pre-Paid Calling Cards	Resale
			\$11,643.48	Greeting Cards	Resale
			\$3,498.47	OTC Medication	Resale
			\$243,817.49	Personal Care (Hygiene)	Resale
			\$143,009.00	Stamps & Post Cards	Resale
			\$11,096.00	Plastic Mugs	Resale
			\$337.73	Plastic Teaspoons	Business Cost
			\$30,947.61	(none indicated)	(none indicated)

The Grand Jury was concerned that both resale items and business cost items were mixed in this account. It was unknown if the cost of the resale items were included before accountants calculated Commissary profits. The Grand Jury believes the resale items should have been included in an account containing other resale items, which would cause account 600 to truly reflect Clothing and Personal Supplies costs.

Disciplinary Incidents at the Orange County Jails

The Orange County Jail Operations Manual Policy 1602.5 and 1800 outlines rules and procedures that are to be followed when an incident occurs per California Title 15. "Any use of force incident that results in physical harm, or serious threat of physical harm, to an employee, inmate/detainee, or other person shall be investigated, documented on the appropriate report form, approved by the supervisor, and submitted to the division commander within twenty-four hours of the incident."⁹ The Grand Jury examined a sampling of incident and use of force reports from all five jails. All documentation was well written and complete. Inmate fighting was a common offense. Whenever pepper spray was used to break up a fight, the inmates were offered medical treatment, allowed to shower and given a clean uniform. Common punishments for

⁹ SAFEWiki Policy1800.5 Force and Restraints

Detention Facilities: Part I - Adult Jails

minor offenses were revoking commissary privileges, loss of good time, and denying visitation.

Central Men's Jail

On February 7, 2013, Deputy Sheriff David Cass was taken into custody, booked into a Santa Ana Jail, and charged with two counts of CPC 68(a) – Officer Asking and Receiving a Bribe. In January 2012, it was discovered that a legal runner was possibly smuggling contraband including marijuana, tobacco, and a cellular phone into the jail. Sheriff's personnel conducted the investigation and gathered evidence including reviewing phone records and video tape.

James A Musick Jail

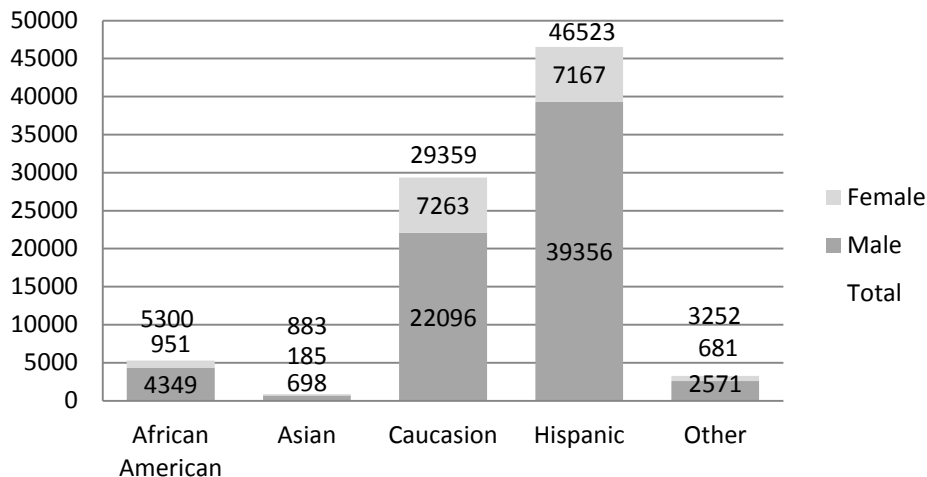
On December 20, 2012, a male adult escaped through the North fence at the James A. Musick Jail. He was captured within hours of his escape. It was rumored that the reason he gave for his escape was that he wanted to spend the day with his family because the Mayan calendar said the world was going to end the next day.

Jail Statistics

Demographics at the Orange County Jails

The figures are for all five jails. This profile population breakdown is based on the entire inmate population.

Jail Demographics - Fiscal Year 2011-2012



Theo Lacy Jail

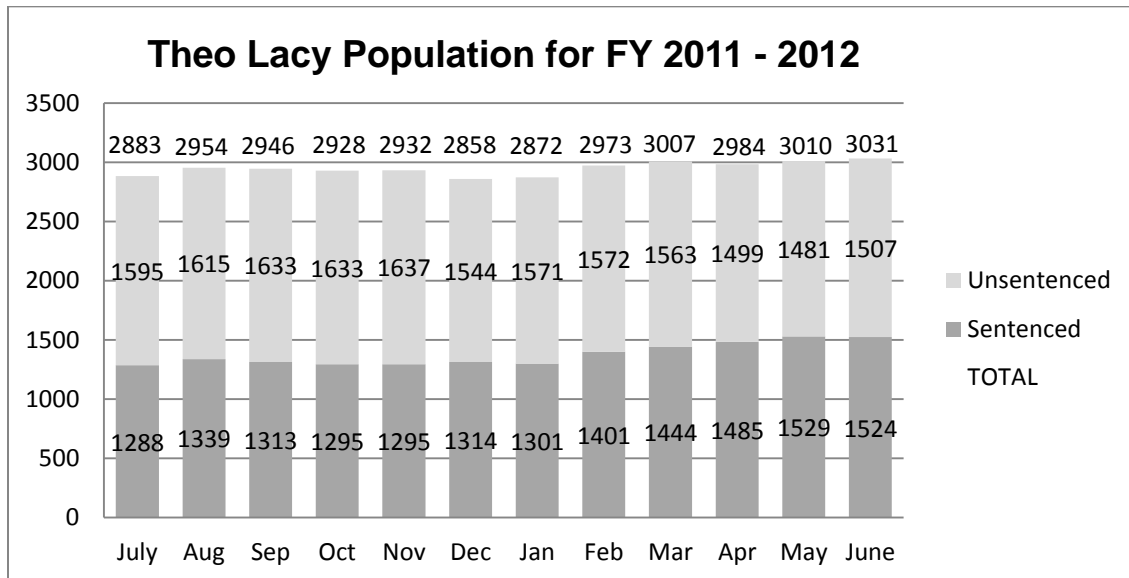
The Theo Lacy Jail is located at 501 The City Drive South, Orange, CA 92868. It is named in the honor of a former sheriff of Orange County. The Jail was originally constructed in 1959 and remodeled on several occasions, most recently 2006.

Detention Facilities: Part I - Adult Jails

Fiscal year 2011 – 2012 the expenditure for salaries and benefits totaled \$59,149,903. These numbers were obtained from Financial/Administrative Services of the Sheriff-Coroner Department.

Theo Lacy	Sworn Employees	Professional Employees
	318	170
Salaries	\$ 25,645,922.00	\$ 3,867,123.00
Retirement Contribution	\$ 14,998,525.00	\$ 1,221,009.00
Health Insurance Contribution	\$ 3,858,691.00	\$ 1,143,996.00
Other Pay (overtime, merit-pay)	\$ 7,409,836.00	\$ 1,004,801.00
Total Compensation	\$ 51,912,974.00	\$ 7,236,929.00
Average Total Compensation	\$ 163,248.35	\$ 42,570.17
Compensation minus Retirement and Health Insurance Contribution	\$ 33,055,758.00	\$ 4,871,924.00
Average Compensation minus Benefits	\$ 103,948.92	\$ 28,658.38

The capacity of the jail is 3,111 inmates. On February 20, 2013, when the Grand Jury visited Theo Lacy the jail count was 3,009 inmates. The Jail holds sentenced and un-sentenced (awaiting judicial action) male inmates as well as male inmates under contract with federal agencies.



Detention Facilities: Part I - Adult Jails

Theo Lacy Jail has the most modern of the video systems examined at the five jails. In the central security area there are touch screen panels that can display the output of many of the cameras located throughout the jail. Doors can be monitored, opened and closed from this central location. Additional cameras and video recorder updates are planned for the jail and all the recording equipment is being relocated to a single centralized location. The barracks areas of the jail is also monitored and recorded by digital video recorders and the data is stored on hard drives for one year. There are also eighteen hand held video cameras that are used by officers when an incident occurs in the jail. These cameras (which also have audio) can be used for reports and as evidence in disciplinary hearings. The benefit of these cameras is in both command and control of the physical plant and creation of an irrefutable history of incidents as they occur.

Two areas of the jail were found to be lacking in video equipment. The first is the dining hall where an old style video camera and VHS tape recording is currently used. The second area of the jail that needs better equipment is the modular housing areas. There are 10 modules each housing 192 inmates. Each module has six day rooms. Each day room needs four cameras to adequately monitor the inmates. Although a total of 240 new cameras seems like a large number, it is hoped that as technology continues to improve and costs come down, equipping these high incident areas will become possible. The Grand Jury would not recommend expenditure for additional video recording devices, if the cost/benefit were not justified.

Central Jail Complex:

The Central Jail complex is located at 550 N. Flower St. in Santa Ana, CA 92703. It consists of the Intake/Release Center, the Central Men's Jail, and the Central Women's Jail.

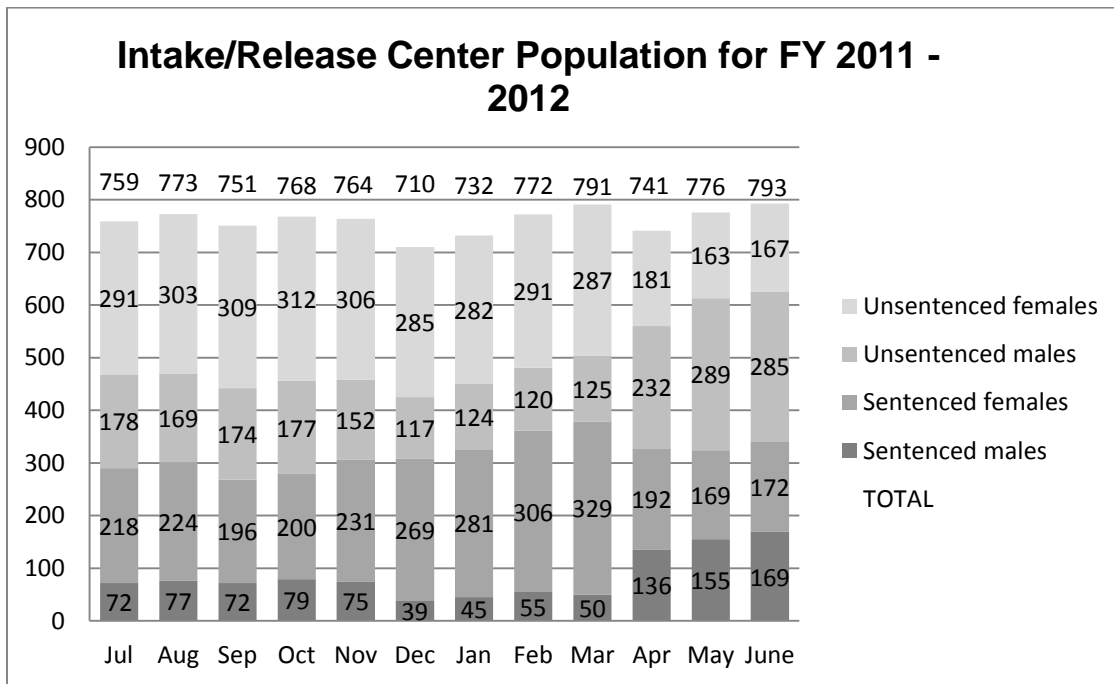
Intake/Release Center (IRC)

Fiscal year 2011 – 2012 the expenditure for salaries and benefits totaled \$48,277,659. These numbers were obtained from Financial/Administrative Services of the Sheriff-Coroner Department.

Detention Facilities: Part I - Adult Jails

IRC	Sworn Employees	Professional Employees
	177	221
Salaries	\$ 15,307,325.00	\$ 9,532,582.00
Retirement Contribution	\$ 9,751,859.00	\$ 2,456,242.00
Health Insurance Contribution	\$ 2,465,725.00	\$ 1,757,577.00
Other Pay (overtime, merit-pay)	\$ 5,501,890.00	\$ 1,504,459.00
Total Compensation	\$ 33,026,799.00	\$ 15,250,860.00
Average Total Compensation	\$ 186,592.08	\$ 69,008.42
Compensation minus Retirement and Health Insurance Contribution	\$ 20,809,215.00	\$ 11,037,041.00
Average Compensation minus Benefits	\$ 117,566.19	\$ 49,941.36

The capacity of the IRC is 903. On February 21, 2013 when the Grand Jury visited the IRC there were 759 inmates.



The IRC has limited video capabilities. It is a very old system that only uses VHS tapes. Each tape is saved for one year. The tapes have been used so many times that the video quality on many when viewed is quite poor. The cameras in the booking loop are especially poor. In the same room with all of the video tapes is a single monitor that

Detention Facilities: Part I - Adult Jails

shows sixteen camera views. This monitor is used to view cameras from the IRC, the Men's Jail and the Women's jail. There are six hand held cameras with audio for recording incidents in the jail. These recordings can be used for reports and as evidence in disciplinary hearings. The IRC needs the upgraded cameras in the booking loop and upgraded cameras in the housing areas.

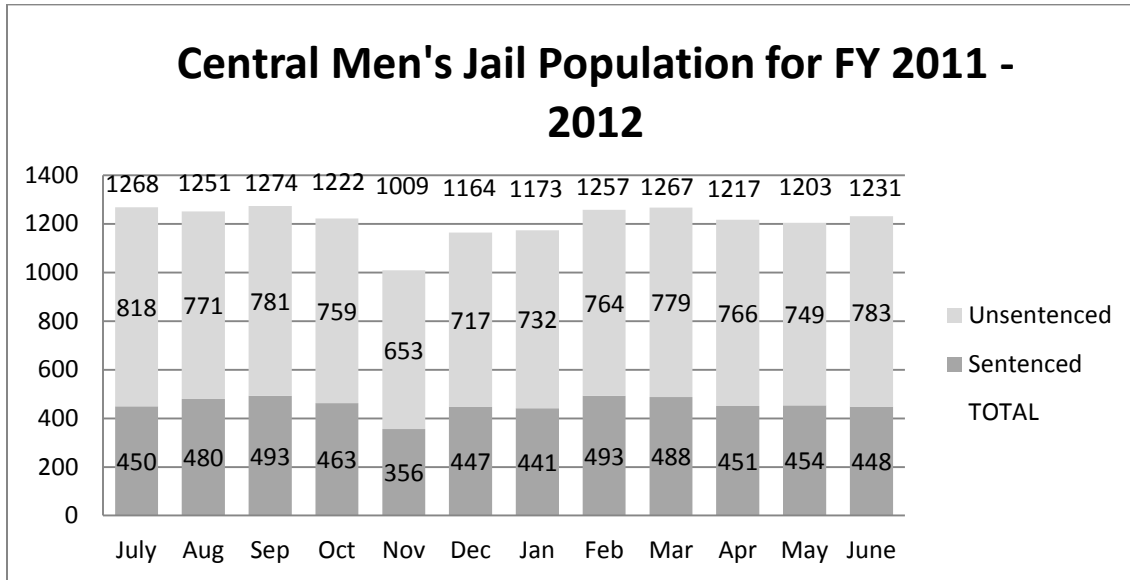
Central Men's Jail

Fiscal year 2011 – 2012 the actual expenditure for salaries and benefits totaled \$23,975,738. These numbers were obtained from Financial/Administrative Services of the Sheriff-Coroner Department.

Central Men's Jail	Sworn Employees	Professional Employees
	124	62
Salaries	\$ 9,386,521.00	\$ 2,335,860.00
Retirement Contribution	\$ 5,859,413.00	\$ 600,197.00
Health Insurance Contribution	\$ 1,605,563.00	\$ 464,622.00
Other Pay (overtime, merit-pay)	\$ 3,250,590.00	\$ 472,972.00
Total Compensation	\$ 20,102,087.00	\$ 3,873,651.00
Average Total Compensation	\$ 162,113.60	\$ 62,478.24
Compensation minus Retirement and Health Insurance Contribution	\$ 12,637,111.00	\$ 2,808,832.00
Average Compensation minus Benefits	\$ 101,912.19	\$ 45,303.74

The capacity of the Men's jail is 1,433. On February 21, 2013, when the Grand Jury visited the Men's jail, there were 1,177 inmates.

Detention Facilities: Part I - Adult Jails



The inmates in the Men's Jail are recorded by cameras in six different locations. There needs to be more cameras to record the inmates. The Central Men's jail needs upgraded cameras in the dining hall and the roof area.

Central Women's Jail

Fiscal year 2011 – 2012 the actual expenditure at the jail for salaries and benefits were \$1,681,627. The jail was only open in April, May and June so these numbers represent approximately 25 percent of a normal budget year. These numbers were obtained from Financial/Administrative Services of the Sheriff-Coroner Department.

Central Women's Jail	Sworn Employees	Professional Employees
	35	10
Salaries	\$ 717,393.00	\$ 88,968.00
Retirement Contribution	\$ 440,723.00	\$ 22,770.00
Health Insurance Contribution	\$ 99,767.00	\$ 24,665.00
Other Pay (overtime, merit-pay)	\$ 265,384.00	\$ 21,957.00
Total Compensation	\$ 1,523,267.00	\$ 158,360.00
Average Total Compensation	\$ 43,521.91	\$ 15,836.00
Compensation minus Retirement and Health Insurance Contribution	\$ 982,777.00	\$ 110,925.00
Average Compensation minus Benefits	\$ 28,079.34	\$ 11,092.50

Detention Facilities: Part I - Adult Jails

The capacity of the Women's jail is 388. On February 21, 2013 when the Grand Jury visited the Women's jail there were 358 inmates.



There are cameras that view the 3 linear housing areas on the second floor. These cameras record onto VHS tapes that are kept in the recording room. Ideally more cameras need to be installed to record the inmates. The Central Women's jail needs upgraded cameras in the dining hall and the roof area.

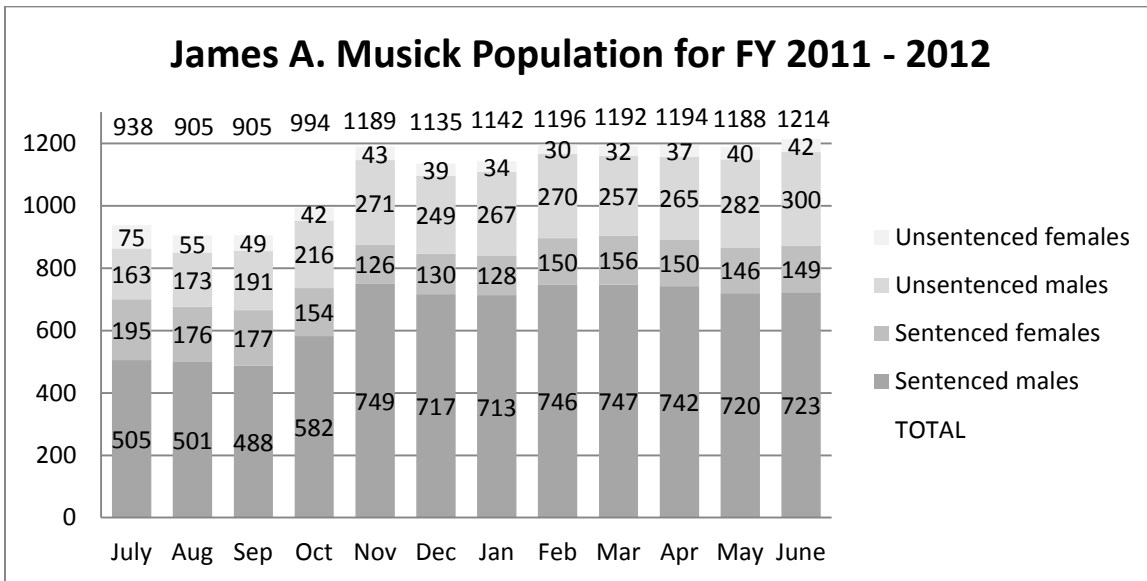
James a Musick Jail

The James A. Musick Jail is located at 13502 Musick Road in Irvine, CA 92618. Fiscal year 2011 – 2012 the actual expenditure at the jail for salaries and benefits totaled \$18,862,362. These numbers were obtained from Financial Administrative Services of the Sheriff-Coroner Department.

Detention Facilities: Part I - Adult Jails

James A. Musick Jail	Sworn Employees	Un-Sworn Employees
	80	60
Salaries	\$ 6,838,125.00	\$ 2,096,074.00
Retirement Contribution	\$ 4,295,942.00	\$ 536,607.00
Health Insurance Contribution	\$ 1,098,736.00	\$ 417,709.00
Other Pay (overtime, merit-pay)	\$ 2,927,021.00	\$ 652,148.00
Total Compensation	\$ 15,159,824.00	\$ 3,702,538.00
Average Total Compensation	\$ 189,497.80	\$ 61,708.97
Compensation minus Retirement and Health Insurance Contribution	\$ 9,765,146.00	\$ 2,748,222.00
Average Compensation minus Benefits	\$ 122,064.33	\$ 45,803.70

When the Grand Jury visited the Jail on February 5, 2013, there were 1,232 inmates housed there. The capacity of the Jail is 1,322 inmates. This total included 309 ICE detainees (248 male and 61 female).



The jail has minimal video recording. Two portable video cameras are used when an incident occurs. The North compound is monitored by four cameras but not recorded. There are four small pictures from each camera on the video screen and one larger image that can be displayed from any one of the four cameras. If an incident occurs, an alarm is sounded and the camera image from the particular camera is enlarged. The classrooms have a closed circuit camera system that is monitored but not

Detention Facilities: Part I - Adult Jails

recorded. The medical area is monitored by camera but not recorded. There are 4 cameras in the visitor's area.

The jail will be undergoing a major expansion in the near future adding 512 beds with infrastructure to add up to 7,584 beds. The jail will have an automated electronic integrated security system. Door controls, intercoms, closed circuit video equipment devices, alarm monitors, motion detectors, and personal body alarms will all be used to enhance the jail's security.¹⁰

FINDINGS

In accordance with California Penal Code Sections §933 and §933.05, the 2012 - 2013 Grand Jury requests responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of the Orange County Sheriff-Coroner Department, the 2012 - 2013 Orange County Grand Jury has arrived at seven principal findings as follows:

- F1 Some Sheriff-Coroner Department employees are unfamiliar with the confidentiality and process of Grand Jury proceedings in civil investigations and the authority of the Grand Jury to admonish witnesses.
- F2 The attention to data tracking of AB 109 inmates is excellent.
- F3 The Theo Lacy Dining Hall has an outdated video VHS camera system.
- F4 The Theo Lacy Housing modules do not have cameras in the day rooms.
- F5 The Central Jail Complex camera systems are inadequate for the (1) dining hall, (2) booking loop, (3) housing areas, and (4) on the roof areas.
- F6 The Commissary employs Community Work Program inmates who with more training could leave the Commissary with a marketable job skill..
- F7 The Commissary Account code 600 has a mixture of business cost and resale items.

RECOMMENDATIONS

In accordance with California Penal Code Sections §933 and §933.05, the 2012 - 2013 Grand Jury requests responses from each agency affected by the

¹⁰ James A. Musick site and facilities master plan, section 5: Architectural Program

Detention Facilities: Part I - Adult Jails

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

Based on its investigation of the Orange County Sheriff-Coroner Department, the 2012 - 2013 Orange County Grand Jury makes the following seven recommendations

- R1 Sheriff-Coroner Department shall make sure employees are aware of the importance and necessity of the confidentiality of the Grand Jury process and the Grand Jury admonition process. (F1)
- R2 Sheriff-Coroner Department employees shall continue to track AB 109 inmates. (F2)
- R3 Theo Lacy shall upgrade the dining hall video system. (F3)
- R4 Theo Lacy shall add four cameras to each day room in the Housing Modules. (F4)
- R5 The Central Jail Complex shall upgrade and provide cameras for the (1) dining halls, (2) booking loop, (3) housing areas, and (4) roof areas. (F5)
- R6 The Commissary shall develop an inmate worker program that partners with a local educational institution to teach skills that will produce employment opportunities that will result in credits leading to marketable skills certification when the inmate is released. (F6)
- R7 Financial administration services shall place the resale items, currently located in the Commissary Clothing and Personal Supplies account 600, into a more suitable account. (F7)

COMMENDATION

The Grand Jury would like to thank the many sworn and professional staff that met with the Grand Jury during the preparation of this report. The professional attitude and hard work the Grand Jury observed was greatly appreciated.

REQUIREMENTS AND INSTRUCTIONS:

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.

Detention Facilities: Part I - Adult Jails

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 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 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 the Penal Code Section §933.05 are required from:

Orange County Sheriff-Coroner Department: F1, F2, F3, F4, F5, F6, F7

Orange County Sheriff-Coroner Department: R1, R2, R3, R4, R5, R6, R7

Detention Facilities: Part I - Adult Jails

Men's Commissary Order Form Page 1



JAIL COMMISSARY ORDER SLIP

Last Name _____
 First Name _____
 Dorm _____ Date _____
 Signature _____

BOOKING NO.									
0	1	2	3	4	5	6	7	8	9
0	1	2	3	4	5	6	7	8	9
0	1	2	3	4	5	6	7	8	9
0	1	2	3	4	5	6	7	8	9
0	1	2	3	4	5	6	7	8	9
0	1	2	3	4	5	6	7	8	9
0	1	2	3	4	5	6	7	8	9
0	1	2	3	4	5	6	7	8	9
0	1	2	3	4	5	6	7	8	9
0	1	2	3	4	5	6	7	8	9

Request Welfare Pack

MEN'S

**BOOKING NUMBER MUST
BE FILLED IN
Correct Mark / Incorrect**

/

ORDER MUST BE SIGNED

STATIONERY QTY. LIMIT LISTED		QTY	COST
3070	(Writing Tablet) 8 1/2x11 (No Limit)	1 2 3 4 5 6 7 8 9	1.50
3030	(Pencil) (Limit 2)	1 2 3 4 5 6 7 8 9	.10
3080	File Folder (Limit 1)	1 2 3 4 5 6 7 8 9	3.85
3040	Erasers (Limit 2)	1 2 3 4 5 6 7 8 9	.20
3060	Tablet 8 1/2x 11 (unlined) (No Limit)	1 2 3 4 5 6 7 8 9	1.75
3050	Colored Pencils (Limit 1)	1 2 3 4 5 6 7 8 9	2.50
3130	(Stamps) - Forever (10 pk.) (No Limit)	1 2 3 4 5 6 7 8 9	5.45
3580	(Envelope) - legal no stamp (5 pk.)	1 2 3 4 5 6 7 8 9	.65
3110	Envelope 9x12 no stamp (No Limit)	1 2 3 4 5 6 7 8 9	.50
3000	Playing Cards (Limit 1)	1 2 3 4 5 6 7 8 9	2.75

FOOD ITEMS QTY. LIMIT 8 EACH		QTY	COST
2130	Soup (Cup Required)	1 2 3 4 5 6 7 8	.60
2300	Tuna Pouch*	1 2 3 4 5 6 7 8	2.50
2280	Beans, Instant*	1 2 3 4 5 6 7 8	1.75
2310	Flour Tortilla 4 pk.	1 2 3 4 5 6 7 8	1.30
2290	Rice, Instant*H	1 2 3 4 5 6 7 8	1.15
2230	Peanut Butter, Singles*H	1 2 3 4 5 6 7 8	.65
2240	Grape Jelly, Singles*	1 2 3 4 5 6 7 8	.40
2250	Cheddar Cheese, Singles	1 2 3 4 5 6 7 8	.75
2260	Jalapeno Cheddar Cheese, Singles	1 2 3 4 5 6 7 8	.75
2390	Poptarts	1 2 3 4 5 6 7 8	1.20
2890	Honeybun, Glazed	1 2 3 4 5 6 7 8	1.35
2880	Dunkin Sticks	1 2 3 4 5 6 7 8	1.35
2820	Chili with Beans, 11.25 oz pkg.	1 2 3 4 5 6 7 8	2.95
2900	Zingers, Chocolate	1 2 3 4 5 6 7 8	1.35
2910	Zingers, Raspberry	1 2 3 4 5 6 7 8	1.35
2950	Jalapeño Slices	1 2 3 4 5 6 7 8	.55

PERSONAL/HEALTH CARE QTY. LIMIT 2 EACH		QTY	COST
1260	Shower Shoes Medium	1 2 3 4 5	1.35
1270	Shower Shoes Large	1 2 3 4 5	1.35
1280	Shower Shoes X-Large	1 2 3 4 5	1.35
1110	Washcloth	1 2 3 4 5	.35
1240	Handkerchief	1 2 3 4 5	1.25
1520	(Toothbrush)	1 2 3 4 5	3.00
1010	(Toothpaste)	1 2 3 4 5	1.50
1020	Soap, Deodorant	1 2 3 4 5	.95
1030	Soap, Moisturizer	1 2 3 4 5	1.95
1150	Hand Lotion 5 pk.	1 2 3 4 5	.75
1440	Pillow (Limit 1)	1 2 3 4 5	8.10
1510	Deodorant	1 2 3 4 5	2.80
1140	Magic Shave	Not available in Medical	6.30
1130	Afta Shave	Not available in Medical	4.25
1470	(Razor), Security SPC	Not available in Medical	1.00
1100	Shaving Cream	Not available in Medical	1.25
1420	Blistex	Not available in Medical	3.35
1390	Facial Skin Cream, Noxema	Not available in Medical	3.15
1600	Pain Reliever, Extra Strength	Not available in Medical	.35
1400	Tums	Not available in Medical	1.30
1410	Cough Drops	Not available in Medical	1.65
1380	B Complex	Not available in Medical	1.25
1390	Multi-Vitamin	Not available in Medical	1.25
1060	Shampoo, Regular 5 pk.	1 2 3 4 5	.80
1070	Shampoo, Dandruff 5 pk.	1 2 3 4 5	1.20
1080	Conditioner, Rinse 5 pk.	1 2 3 4 5	1.35
1170	Hair Dressing	1 2 3 4 5	7.00
1200	Palm Comb/Brush	1 2 3 4 5	.95
1220	Afro-Pick, Comb	1 2 3 4 5	.50
1190	(Comb)	1 2 3 4 5	.25
1230	Ponytail Holders	1 2 3 4 5	.20
1480	Baby Powder	Not available in Medical	1.50
1590	Sinus Pain and Pressure	Not available in Medical	.35
1540	Ibuprofen 200mg	Not available in Medical	.35

SNACK/CRACKERS/COOKIES QTY. LIMIT 15 TOTAL		QTY	COST
2480	Cheez-it Crackers*	1 2 3 4 5 6 7 8 9 10	.70
2430	Brownies, Bar*	1 2 3 4 5 6 7 8 9 10	1.05
2600	Rice Krispies Treats	1 2 3 4 5 6 7 8 9 10	1.10
2560	Chocolate Chip Cookies*	1 2 3 4 5 6 7 8 9 10	.75
2570	Famous Amos Cookies*	1 2 3 4 5 6 7 8 9 10	.80
2580	Nutter Butter Cookies*	1 2 3 4 5 6 7 8 9 10	.95
2400	Soft Granola Bar*	1 2 3 4 5 6 7 8 9 10	.65
2390	Hard Granola Bar*	1 2 3 4 5 6 7 8 9 10	.85
2370	Cheese Popcorn	1 2 3 4 5 6 7 8 9 10	.85
2380	Jalapeno Popcorn	1 2 3 4 5 6 7 8 9 10	.85
2620	Oreo Cookies*	1 2 3 4 5 6 7 8 9 10	.75
2660	Wheat Thins	1 2 3 4 5 6 7 8 9 10	1.10

NOTES

- Adjustments for orders not received, due to transfer, will be done within 2 working days.
- Flushing your Commissary trash jeopardizes your Commissary privileges. Please don't do it.
 Tirando su basura de la Comisaria en el escusado perjudicara su privilegio de la Comisaria. Por Favor no lo haga.
 Bo rác Commissary vào toilet gây nguy hại cho quyền được mua Commissary. Xin đừng làm vậy.
- Valid wrist band required for Commissary.
- Accounts with a balance of \$2.00 or less may request a welfare pack. All requests for welfare packs will be charged \$2.00. Outstanding charges will be deducted as funds become available.
 Un internado con \$2.00 o menos en su cuenta, puede pedir un paquete de ayuda. Cuando dinero sea depositado en su cuenta, sera cargado por cada paquete recibido, anteriormente.
 Ban có the doi hoi mot tai vat dung ca nhan neu so tien trong trung muc duoi \$2.00. Tuy nhiên ban sẽ phải hoàn tiền cho những tai vat dung ca nhan do khi trong mức của ban có \$2.00 trở lên.
- Commissary orders for inmates on Loss of Commissary, Loss of all Privileges, or housed in Disciplinary Isolation are limited to those hygiene & stationery items in parenthesis.
ORDERS MUST BE CHECKED FOR ACCURACY IN THE PRESENCE OF THE COMMISSARY DELIVERY PERSONNEL WHEN YOU LEAVE THE PRESENCE OF THE COMMISSARY PERSONNEL, THE TRANSACTION IS FINAL.

Detention Facilities Part II:
How Do We Know If We Are Taking Care
Of Our At-Risk Juveniles?



2012-2013

Detention Facilities Part II: How Do We Know If We Are Taking Care Of Our At-Risk Juveniles?

SUMMARY

As of July 2012, the Orange County Probation Department operated four juvenile detention facilities in Orange County. A fifth facility, Los Pinos, had been closed in 2009. It is, however, included in the juvenile detention centers' budget. The remaining four facilities are residential and house juveniles who have committed various offenses. Some of these youth are awaiting an initial court appearance.

Overall, the residential treatment/correctional centers which include: (1) Juvenile Hall, (2) Youth Leadership Academy, (3) Youth Guidance Center, and (4) Joplin Youth Center, are comprehensive in their administration, housing, and behavior modification programs. These particular programs have proven to reduce recidivism.¹ Many other programs and activities are used in the juvenile facilities, but are not evidenced-based. Additionally, operating budgets for each detention facility were examined for transparency. The Grand Jury feels that this is a necessary element for a complete report.

For many years, disproportionate minority incarceration contact which is an overrepresentation of youth of color has remained a problem. To address this issue the Orange County Probation Department and the W. Haywood Burns Institute collaborated on a Juvenile Justice System Reform Initiative.² This collaboration is ongoing.

To decrease the number of incarcerated youth, juveniles that are arrested and sent to Juvenile Hall are given a Custody Intake Risk Assessment to decide if they should be incarcerated and where they should be housed. Some of those not incarcerated are required to wear a Geo Positioning System (GPS) anklet which tracks them at all times. They report to centers where they attend school and see their probation officer. Along with Accountability Reporting Centers the Juvenile Detention Alternatives Initiative has produced results showing that many juveniles will rehabilitate better at home and under the supervision of a probation officer. This saves money and allows parents to become or remain involved.

REASON FOR STUDY

This study is to comply with Section 919(b) of the California Penal Code requiring the Grand Jury to "inquire into the condition and management of public prisons within the County." Although the juvenile detention centers operated by the Probation Department are not technically "prisons", the Grand Jury chooses to include juvenile detention centers because they perform a similar function and are within the jurisdiction of the Grand Jury.

METHOD OF INVESTIGATION

¹ Orange County Probation defines recidivism as committing a crime after a juvenile has been released and is still on probation.

² Orange County Probation Department 2012 Business Plan, Department of Core Services, p.10.

Detention Facilities Part II: How Do We Know If We Are Taking Care Of Our At-Risk Juveniles?

The Grand Jury used the following sources in this report:

1. There were two visits to four juvenile detention facilities for overview, inspection, and dissemination of questionnaire responses.
2. Questionnaire data was analyzed.
3. Meetings and Interviews were held with the following:
 - Upper level management of the Probation Department, directors, staff, teachers, and juvenile wards in each residential facility
 - Attendance at the Probation Department and Orange County Department of Education Meeting, (Dec. 17, 2012)
 - Interview with Orange County Department of Education Alternative Correctional Community Education Schools and Services representative (ACCESS), (Jan. 7, 2013)
 - Orange county Probation Department Meeting with the Orange County Grand Jury Criminal Justice Committee (Oct. 9, 2012)
4. Research:
 - Grand Jury Standards of Review of Jails and Juvenile Detention Centers Fiscal Year (FY) 2011-2012
 - Orange County Probation Department 2012 Business Plan
 - Orange County Grand Jury 2011-2012 Final Report, Juvenile Detention and Treatment Facilities
 - Orange County Juvenile Justice Commission Report 2011
 - "Orange County Register" articles on juvenile detention centers
 - Office of Independent Review Juvenile Hall 2012 Incident Report
 - Youth Law Center of San Francisco and Georgetown University, Early Learning Center Collaboration Report
5. Phone Interviews with:
 - Youth Guidance Center Management
 - Joplin Youth Center Management
 - Orange County Probation Department Juvenile Division
 - Orange County Probation Department, Administrative and Fiscal Division Management

BACKGROUND AND FACTS

Five juvenile detention centers are discussed in this study:

- 1) Los Pinos
- 2) Juvenile Hall
- 3) Youth Leadership Academy
- 4) Youth Guidance Center
- 5) Joplin Youth Center

Detention Facilities Part II: How Do We Know If We Are Taking Care Of Our At-Risk Juveniles?

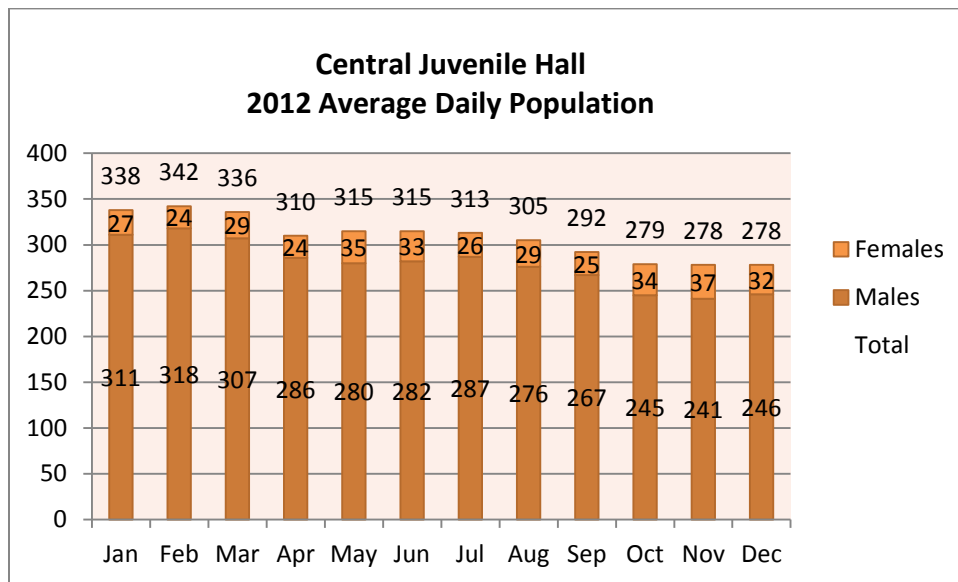
Los Pinos Conservation Camp

Los Pinos located on Ortega Highway in Lake Elsinore, was closed June 30, 2009. The land and buildings belong to the U.S. Forestry Services and are leased by the Orange County Probation Department. This facility does not have a budget; however, \$349,677.00 is spent to maintain empty buildings and roads. The future of this facility is unknown at this time.

FY 2011-12 (July 1 2011- June 30 2012) Probation Department Detention Center Expenses			
Los Pinos			
Expenses	Budgeted	Actual	Variance
Plant	N/A	\$ 349,677	N/A
Total Expenses	N/A	\$ 349,677	N/A

Orange County Juvenile Hall

Juvenile Hall is located on City Drive in the city of Orange next door to the Lamoreaux Justice Center where juvenile courts are readily available. Males and females ages 12-18 are housed at this 434 bed maximum security facility. The average daily population keeps dropping, resulting in the closure of some units. As of March 5, 2013 there were approximately 244 wards; 231 males and 13 females.



Juveniles are assigned to different residential units according to their offense. Some are awaiting a court appearance to decide where they will be incarcerated. With lesser offenses, juveniles are required to wear a GPS anklet. They attend the Youth Reporting Program, where a collaborative partnership of the Orange County Probation Department, the Orange County Department of Education, the Orange County Health Care Agency, and participating community based organizations use supervisory

Detention Facilities Part II: How Do We Know If We Are Taking Care Of Our At-Risk Juveniles?

techniques to avoid incarceration of the juvenile. This results in significant cost savings for the County and promotes lawful and productive citizenship for the juvenile.³

In 2012 there was an incident between a male and female detainee. Consequently, males and females are housed in separate units and no longer have any interaction.

Other residential units separately house non-violent minors, sex offenders, highly volatile offenders, the mentally ill, offenders that will be tried as adults, younger boys awaiting commitment or court proceedings, and lastly, youth working the Progressive Rehabilitation in a Dynamic Environment program (see glossary). This data-driven program is used by juveniles that are serving longer terms in Juvenile Hall. These boys have a greater opportunity to complete programs such as Thinking for a Change and Puppies and Wards program (see glossary). They accrue more high school credits because they are incarcerated longer, and the school is year round.

Juvenile Hall's budget for the fiscal year 2011-2012 has large food variances. A contributing factor to the budget discrepancy is a lack of accountability for food costs split between Juvenile Hall and Youth Leadership Academy. Juvenile Hall feeds the youth at Youth Leadership Academy, yet Youth Leadership Academy has its own food budget. There is no clarity in food cost allocation.

Other observed problems at Juvenile Hall were the poor condition of the old windows and toilet stalls in Housing Units M and O⁴. In particular the toilet stalls have been a problem for a long time.

³ Orange County Probation Department 2012 Business Plan, Core Services, p.3

⁴ Inspection of Juvenile Hall, (Dec.19, 2012)

Detention Facilities Part II: How Do We Know If We Are Taking Care Of Our At-Risk Juveniles?

FY 2011-12 (July 1 2011- June 30 2012) Probation Department Detention Center Expenses				
Juvenile Hall: No. of Beds = 434				
Sworn Employees (396)				
Expenses	Budgeted	Actual	Variance	Comment
Salaries	\$ 20,975,463	\$ 19,617,179	\$ 1,358,284	
Retirement	\$ 6,739,437	\$ 7,147,434	\$ (407,997)	
Health	\$ 3,342,852	\$ 2,912,918	\$ 429,934	
Other Pay	0	\$ 1,647,740	\$ (1,647,740)	
Sub Total	\$ 31,057,752	\$ 31,325,271	\$ (267,519)	
Un-sworn Employees (70)				
Salaries	\$ 2,574,281	\$ 2,407,581	\$ 166,700	
Retirement	\$ 542,811	\$ 575,667	\$ (32,856)	
Health	\$ 537,228	\$ 468,134	\$ 69,094	
Other Pay	0	0	N/A	See Note 1
Sub Total	\$ 3,654,320	\$ 3,451,382	\$ 202,938	
Plant	\$ 2,426,956	\$ 2,240,731	\$ 186,225	
Food	\$ 755,000	\$ 1,519,479	\$ (764,479)	See Note 2
Total Expenses	\$ 37,894,028	\$ 38,536,863	\$ (642,835)	
Note 1: No "budgeted or actual" amount reported by responding agency.				
Note 2: Food expenses also include Youth Leadership Academy (YLA) food expenses.				

The Orange County Superintendent of Schools/Department of Education provides a fully accredited high school for Juvenile Hall and Youth Leadership Academy. The accreditation is provided by the Western Association of Schools and Colleges. Otto Fischer School (located at Juvenile Hall) has a state aligned curriculum that follows the California State Standards and Framework for all classes. Special Education Teachers write Individual Education Plans for students who need them throughout all the juvenile detention facilities. This facility has a full time Principal to work with the teachers and juveniles in maintaining discipline, classroom management, and innovative educational strategies. This year, Otto Fisher High School juveniles, which includes Juvenile Hall and Youth Leadership Academy, earned 18 High School Diplomas and 23 G.E.D.s. Educational programs are working. Activities, such as community service, are not offered because Juvenile Hall is a maximum security facility. Instead long term detainees concentrate on family reunification and transitional programs.

The evidenced-based Thinking for a Change program is used at Juvenile Hall in Unit T where detainees will be tried as adults and have a longer stay awaiting court dates. This curriculum works best if the minor completes all 25 lessons.⁵ Due to short terms of incarceration, many juveniles in other housing units do not complete the program. The Probation Department is now considering a program called Decision Points (see glossary) which takes less time.⁶ Life skills, vocational classes, and drug abuse programs are offered at Juvenile Hall, particularly in Unit Q, where there are long term detainees. Parenting is taught in the Baby Elmo Program (see glossary) where

⁵ Juvenile Hall Inspection and Information from Upper Management (Dec. 19, 2012).

⁶ Juvenile Justice commission Meeting, (Feb.6,2013)

Detention Facilities Part II: How Do We Know If We Are Taking Care Of Our At-Risk Juveniles?

parent and infant visits involve modeling parental behaviors for young fathers.⁷ Lessons for pregnant minors in the You're Becoming a Mom program (see glossary) are offered by the Medical Unit. Also considered unique is the Puppies and Wards program, which has become very successful and proven beneficial for both dogs and wards. The dogs are trained by the wards and then adopted. Boys in the Puppies and Wards program focus on the dog instead of themselves. They also learn the skill of dog training. Juvenile Hall management told the Grand Jury the juveniles in this program are less inclined to recidivate.

Substance abuse classes are provided by the Orange County Superintendent of Schools/Department of Education through Safe Schools' funding. A drug and alcohol counselor and a full-time mental health professional administer mental health assessments and psychological tests. Individual therapy, family therapy, group therapy, substance abuse assessments and individual case management are also provided.

Re-entry Programs are sadly lacking at this time. The Youthful Transition Intervention program (see glossary) lost its federal grant funding in 2011-2012.⁸ Additional community involvement and funds to support it are on the Probation Department wish list.⁹ No one in the Probation Department wants to see their budget cut again. However, lacking research, the success of several probation programs and activities is not available for measurement. Programs need data to prove their viability, and the Orange County Probation Department Research Division has been cut from 14 researchers to 4.¹⁰ The University of California, Irvine, which is local, has renowned criminology and sociology departments. The Orange County Sheriff's Department is looking to this university for research on recidivism. This is an available resource.

Discipline at Juvenile Hall and the other juvenile detention facilities is similar. Verbal counseling, written assignments, or confinement in a disciplinary room may be imposed depending on the offense. Major violations could require a hearing. A floor or dorm supervising juvenile correctional officer hears the evidence of the incident, and conducts a hearing. Then management reviews it. If the juvenile has committed a crime, he/she may be sent back to juvenile court.

Correctional Health Services provide nurses, doctors, dental and eye care at Juvenile Hall and Youth Leadership Academy, which uses Juvenile Hall's care providers. Western Medical Center of Anaheim provides care for serious injuries and illness. In case of an emergency, the juvenile is taken to the University of California, Irvine Hospital for treatment. Juveniles are medically well-cared for at Juvenile Hall.

⁷ Youth Law Center of San Francisco and Georgetown University Early Learning Collaboration Study (www.ylc.org/about-us/mission)

⁸ Juvenile Hall Responses to Grand Jury Standards of Review for Jails and Detention Centers 2012

⁹ Orange County Probation Department meeting with the Grand Jury Criminal Justice Committee, (Oct.9, 2012)

¹⁰ Ibid.

Detention Facilities Part II: How Do We Know If We Are Taking Care Of Our At-Risk Juveniles?

Probation Department: Juvenile Hall Incident Update

In February 2012, a male and female were left alone for several hours in the female's quarters and engaged in sexual activities. The Orange County Probation Department and Office of Independent Review initiated an investigation. "This investigation was thorough, comprehensive and reasonably fast paced."¹¹ After the 2011-2012 Grand Jury Juvenile Detention Facilities Report, it was recommended that the male and female wards not be placed in the same unit.¹² Consequently, females attend school, eat and attend programs separately from the male wards.

"Sixteen juvenile correctional officers involved in this incident were put on administrative leave; two left the department, four returned to work and ten warranted termination. Of these, three returned to work after a significant suspension based on lesser culpability, and one is still being investigated. Ultimately, the Office of Independent Review oversaw the Probation Department's investigation and disciplinary actions. Additionally and importantly, the Probation Department continues to consider policy changes and new protocols...to prevent such complacency again."¹³

According to the Office of Independent Review, several juvenile correctional officers involved were experienced but failed to follow protocol for reporting this incident.

Youth Leadership Academy (YLA)

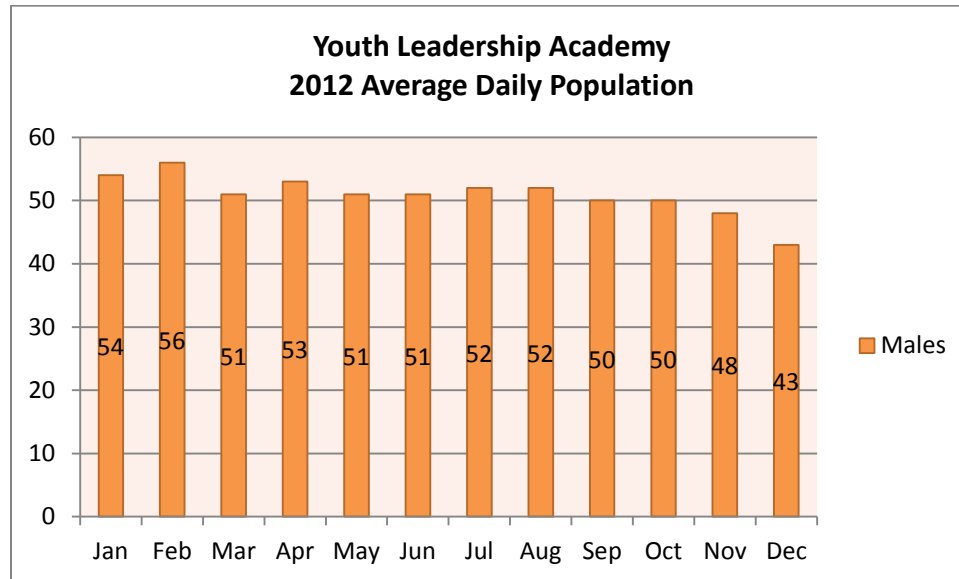
Youth Leadership Academy is a juvenile residential and treatment center located behind Juvenile Hall. It has a capacity of 120 beds in secured, self-contained buildings. Currently only half the beds are in use for males, who are older, have social behavioral issues and/or some drug problems. As of March 5, 2013 there were 45 males housed there.

¹¹ Office of Independent Review Report, (Jan, 2013) pp.7-8

¹² Ibid,

¹³ Ibid.

Detention Facilities Part II: How Do We Know If We Are Taking Care Of Our At-Risk Juveniles?



Upon inspection, the facilities are clean, orderly, modern and secure.¹⁴ Some of the juveniles housed there expressed the opinion that Youth Leadership Academy is a better housing facility than Juvenile Hall.¹⁵

Looking at the budget for the fiscal year 2011-2012, food costs are very low and yet show a negative variance. Juvenile Hall provides meals for Youth Leadership Academy residents, and the food expense in the fiscal budget 2011-2012, is for small events that outsiders attend. It is anticipated that this line item will increase when this budget reflects a charge-back for meals received from Juvenile Hall. This budget is questionable because of the relationship Youth Leadership Academy has with Juvenile Hall for food costs. (See note 3 on attached ledger, regarding Juvenile Hall's food budget below).

¹⁴ Grand Jury Inspection of Youth Leadership Academy, (Dec.19, 2012)

¹⁵ Ibid.

Detention Facilities Part II: How Do We Know If We Are Taking Care Of Our At-Risk Juveniles?

FY 2011-12 (July 1 2011- June 30 2012) Probation Department Detention Center Expenses				
Youth Leadership Academy: No. of Beds = 120 (Currently only 60 in use)				
Sworn Employees (28)				
Expenses	Budgeted	Actual	Variance	Comment
Salaries	\$ 1,753,852	\$ 1,608,520	\$ 145,332	
Retirement	\$ 556,068	\$ 588,292	\$ (32,224)	
Health	\$ 270,840	\$ 220,373	\$ 50,467	
Other Pay	\$ 21,768	\$ 181,673	\$ (159,905)	
Sub Total	\$ 2,602,528	\$ 2,598,858	\$ 3,670	
Un-sworn Employees (2)				
Salaries	\$ 129,524	\$ 118,791	\$ 10,733	
Retirement	\$ 26,728	\$ 28,277	\$ (1,549)	
Health	\$ 18,240	\$ 14,841	\$ 3,399	
Other Pay	\$ 2,520	\$ 6,113	\$ (3,593)	
Sub Total	\$ 177,012	\$ 168,022	\$ 8,990	
Plant	\$ 1,158,020	\$ 260,948	\$ 897,072	
Food	\$ 5,000	\$ 8,100	\$ (3,100)	See Note 3
Total Expenses	\$ 3,942,560	\$ 3,035,928	\$ 906,632	
Note 3: These food expenses are not included in Youth Leadership Academy (YLA) food expenses.				

Youth Leadership Academy students attend Juvenile Hall's school. The juveniles are supervised while they walk over to Otto A. Fischer High School at Juvenile Hall. Once there, they are encouraged to earn high school credits, finish GED classes or complete the requirements for their diploma. The teachers appear committed to the students' needs and have good rapport with them. This is seen by cooperation in the classroom.¹⁶ Orange County Superintendent of Schools/ Department of Education provides a certified counselor, psychological clinician as well as special education evaluations and services to help these juveniles achieve success.

Youth Leadership Academy offers life skills classes such as: job preparation, vocational training and economics classes which teach financial responsibility. In order to obtain a job, students learn how to write a resume, a letter of introduction, and a thank you letter. Interview skills are practiced by role-playing. Lastly and importantly, the program Thinking for a Change provides lessons on decision making which frequently segues into the substance abuse classes.

Resources for substance abuse counseling are provided by the Orange County Superintendent of Schools/Department of Education. The Safe Schools monies provide a certified counselor/ clinician who uses the ASERT program (see glossary). Serious drug abuse by juveniles is evaluated for transfer to the Youth Guidance Center. The Grand Jury was told that due to funding constraints, Youth Leadership Academy is unable to offer family therapy, which partners the juvenile and their parent in counseling together.¹⁷ This facility hopes to provide this in the future.

Volunteers from the community are also involved in appropriate programs to help incarcerated youth. Reading, skill building, tutoring, community service and restorative

¹⁶ Grand Jury Inspection of Juvenile Hall (Dec.19,2012)

¹⁷Grand Jury Inspection of Youth Leadership Academy, (Dec.19, 2012)

Detention Facilities Part II: How Do We Know If We Are Taking Care Of Our At-Risk Juveniles?

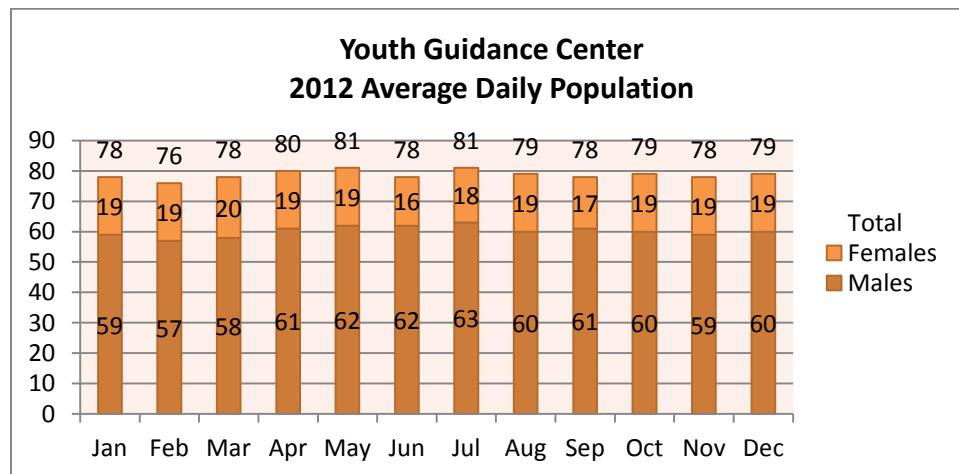
justice activities are available at Youth Leadership Academy. Community service could be a beach clean-up or helping out in a classroom setting. In restorative justice activities, the juvenile must do something to help the victim of their crime or some type of community service. Again, the short stay of these youth (42-45 days) makes it difficult to effect a long term change in behavior. There is no data collected to evaluate the effectiveness of these activities.

Discipline ranges from verbal counseling and redirection for minor infractions to work assignments and loss of free time activities for more serious behaviors. Fighting or attacking a juvenile correctional officer, or other Youth Academy Leadership employees can result in a due process hearing, going to court, receiving more detention time, or a transfer to Juvenile Hall.

Individuals with health problems go to Juvenile Hall which has a health facility. Emergencies or medical procedures are provided by Western Medical Center of Anaheim or University of California, Irvine Hospital. The juveniles receive whatever medical care they need; be it preventative or emergency.

Youth Guidance Center (YGC)

Youth Guidance Center is a minimum security (camp) facility located on North Hesperian Street in Santa Ana across the river from Juvenile Hall. It has eighty beds; 60 are available for males and 20 for females. The age range of these juveniles is 13-20 years. On March 5, 2013 there were 59 males and 20 females housed there.



These juveniles have drug and alcohol abuse issues and have committed crimes. Youth Guidance Center has adopted a program to reduce recidivism through behavior modification. The Aggression Replacement Training program (see glossary) teaches juvenile offenders social skills including anger management and moral reasoning. Seven staff members have been trained to administer this class.¹⁸ This evidence based program is taught three times a week.

¹⁸ Orange County Juvenile Justice Commission Annual Report 2011, p14.

Detention Facilities Part II: How Do We Know If We Are Taking Care Of Our At-Risk Juveniles?

The inspection of this facility showed it was well maintained, modern, and clean inside and outside of the residential units and the classrooms.¹⁹ The exterior grounds are maintained by Orange County maintenance and an on-site horticulture class. This class is quite popular among the juveniles. The Grand Jury was told the class was very successful. The students have even built an outdoor performance area.

The budget is questionable in one particular area. The variance in food costs is excessive. Some monies were used for special events with visiting groups, or at school celebrations, but those do not account for such a huge difference in what was budgeted and what was spent.²⁰ Other costs such as the category "Other Pay" need explanation as to what these expenses are. Once again, this is another detention center budget with variances so large that it reflects poor accounting methods.

FY 2011-12 (July 1 2011- June 30 2012) Probation Department Detention Center Expenses				
Youth Guidance Center: No. of Beds = 80				
Sworn Employees (65)				
Expenses	Budgeted	Actual	Variance	Comment
Salaries	\$ 3,949,919	\$ 3,813,346	\$ 136,573	
Retirement	\$ 1,256,845	\$ 1,388,465	\$ (131,620)	
Health	\$ 596,844	\$ 545,158	\$ 51,686	
Other Pay	\$ 39,528	\$ 426,137	\$ (386,609)	
Sub Total	\$ 5,843,136	\$ 6,173,106	\$ (329,970)	
Un-sworn Employees (10)				
Salaries	\$ 395,155	\$ 381,490	\$ 13,665	
Retirement	\$ 80,939	\$ 89,415	\$ (8,476)	
Health	\$ 75,120	\$ 68,615	\$ 6,505	
Other Pay	\$ 1,680	\$ 4,812	\$ (3,132)	
Sub Total	\$ 552,894	\$ 544,332	\$ 8,562	
Plant	\$ 1,266,344	\$ 976,788	\$ 289,556	
Food	\$ 231,698	\$ 506,322	\$ (274,624)	
Total Expenses	\$ 7,894,072	\$ 8,200,548	\$ (306,476)	

The Orange County Superintendent of Schools/Department of Education operates the Rio Contiguo High School on site. This year, there were 16 High School Diplomas and 49 G>E.D.s earned at Rio Contiguo High School. These statistics reflect the dedication of the teachers and the motivation of the juveniles. The school has an Assistant Principal who splits her time between Youth Guidance Center and the Joplin Youth Center. The distance from one center to the other is 26.33 miles. If there is traffic there can be delays. This poses a problem when one facility needs a school Principal and one is not available.²¹ The Grand Jury was told by Youth Guidance Center management that disciplinary incidents appear to occur more frequently when a substitute teacher is in the classroom and the lead teacher is pulled from the classroom for other duties. In general, some students fail to complete their assignments in class if there is a substitute directing the class. This creates an atmosphere for both minor and serious disciplinary incidents to occur.

¹⁹ Grand Jury Inspection of Youth Guidance Center (Dec. 10, 2012).

²⁰ Orange County Grand Jury Inspection of Youth Guidance Center (Dec. 10, 2012)

²¹ Orange County Grand Jury Inspection of Youth Guidance Center, (Dec.10, 2012).

Detention Facilities Part II: How Do We Know If We Are Taking Care Of Our At-Risk Juveniles?

The school consists of several teachers and a special education teacher who provides special education assessments and language development services. Students also have opportunities to perform community service with organizations such as: “Angels of Love,” (see glossary) making stained glass angel figurines to bring hope to sick children and families suffering grief over the loss of a loved one, “Shortstop,” (see glossary) where Youth Guidance Center juveniles counsel young people on the dangers of drug abuse, and the Ronald McDonald House, where the juveniles interact with kids who are going through catastrophic illnesses. These activities give the juvenile a different perspective on life, and a focus on others, not just themselves. College visits are also arranged by the staff. These activities are good for the students and the community.

Two evidence based cognitive behavioral programs that affect behavior modification are Thinking for a Change, and Aggressive Replacement Training. These are life skills classes. The Regional Occupational Program (see glossary) provides other skills such as business technology, culinary arts, and parenting. This program also gives some students the opportunity to work in a business and learn the skills necessary to run that business. This established curriculum has assisted juveniles to obtain a job or career for their future.

Since drug abuse is the central issue for Youth Guidance Center detainees, there are several programs that address this: Substance Abuse and Mental Health Assessment Recovery Relapse Preventive Treatment (see glossary), the Project Toward No Drug Abuse (evidenced based) (see glossary), and off-grounds self-help groups, Alcoholics Anonymous (AA) (see glossary) and Narcotics Anonymous (NA) (see glossary). AA and NA come to the campus one evening a week. The other two substance abuse programs provide individual counseling, drug education, and group sessions.

Individual treatment plans are tailored to each detainee’s specific needs. There is an on-site psychologist and clinician to encourage goal setting. A nurse is available Monday through Friday for physical problems and assessment. Wards with serious conditions are sent to Juvenile Hall to see the doctor or to Western Medical of Anaheim. Lastly, related services continue as re-entry programs to better acclimate released youth back into society.

For disciplinary procedures Youth Guidance Center uses the Probation Department Directive known as “The Deterrence of Unacceptable Behavior, Supervision Techniques to Prevent and Control Acting-Out Behavior.” This adheres to the Administrative Directive Minor’s Rights and Disciplinary Due Process.²² The staff and faculty at Youth Guidance Center have established rapport with these minors which helps create a positive atmosphere for counseling and corrective modeling. Serious

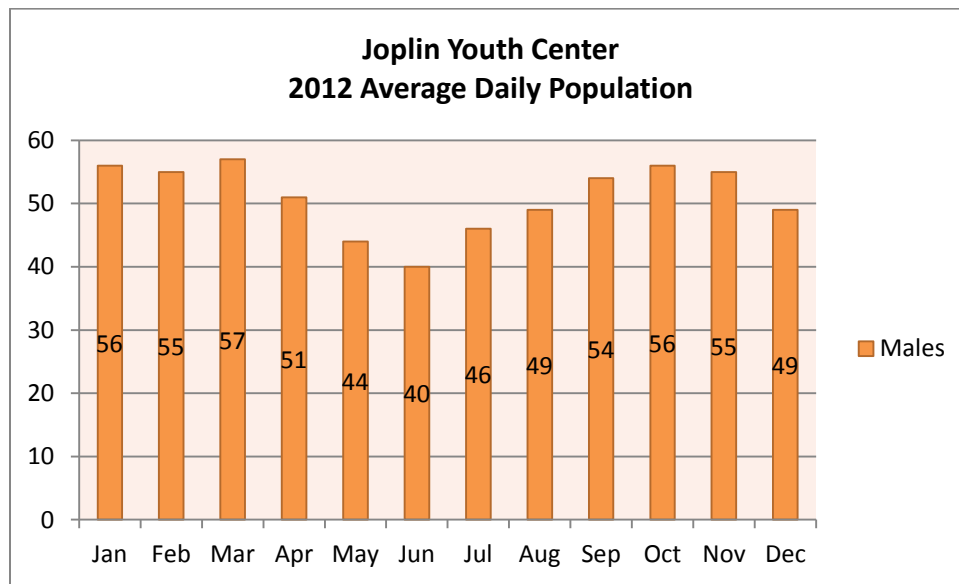
²² Administrative Directive 3-1-043 “Behavior Management and Disciplinary Due Process” (7/16/2012), pp.1-8.

Detention Facilities Part II: How Do We Know If We Are Taking Care Of Our At-Risk Juveniles?

discipline infractions can send a juvenile back to court or transfer them to Juvenile Hall. All investigations give the offender due process.

Joplin Youth Center (Joplin)

Joplin Youth Center is a minimum security correctional facility (camp) located in the foothills of the Santa Ana Mountains in Trabuco Canyon. This residential center houses boys 15-17 years of age. As of March 5, 2013, there were 57 males living in dorms. The capacity is 64 beds.



FY 2011-12 (July 1 2011- June 30 2012) Probation Department Detention Center Expenses				
Joplin Youth Center: No. of Beds = 64				
Sworn Employees (37)				
Expenses	Budgeted	Actual	Variance	Comment
Salaries	\$ 2,255,016	\$ 2,161,692	\$ 93,324	
Retirement	\$ 733,359	\$ 780,624	\$ (47,265)	
Health	\$ 372,396	\$ 348,226	\$ 24,170	
Other Pay	\$ 20,496	\$ 272,850	\$ (252,354)	
Sub Total	\$ 3,381,267	\$ 3,563,392	\$ (182,125)	
Un-sworn Employees (11)				
Salaries	\$ 295,266	\$ 283,046	\$ 12,220	
Retirement	\$ 60,928	\$ 64,855	\$ (3,927)	
Health	\$ 57,948	\$ 54,147	\$ 3,801	
Other Pay	\$ 2,520	\$ 7,789	\$ (5,269)	
Sub Total	\$ 416,662	\$ 409,837	\$ 6,825	
Plant	\$ 1,588,380	\$ 1,224,446	\$ 363,934	
Food	\$ 113,000	\$ 392,897	\$ (279,897)	
Total Expenses	\$ 5,499,309	\$ 5,590,572	\$ (91,263)	

Detention Facilities Part II: How Do We Know If We Are Taking Care Of Our At-Risk Juveniles?

Looking at Joplin's budget the variance in food expenses is high. Another concern is that the plumbing is old and problems occur. It will need to be replaced eventually. However, the need is not yet critical and no repairs are planned.²³

Orange County Superintendent of Schools/Department of Education provides academic classes at Joplin High School under the Alternative Correctional Community Education Schools and Services Division. Students are offered standardized curriculum to finish credits. As the juvenile population is basically younger teens, there was one High School Diploma awarded this year.

This is a Western Association of Schools and Colleges accredited school. Unfortunately, there is no full time Principal or Assistant Principal on site. This can disrupt the administrative business of the school. Although the Orange County Superintendent of Schools/Department of Education takes care of reports, testing materials, and textbook purchases, a Principal or Assistant Principal creates a sense of authority in the school to which students and faculty must be responsible. In a small year round school (the juvenile detention schools are all year round) such as Joplin, with a high turn-over in juveniles, the Principal or Assistant Principal may be able to counsel students about their educational future, calm them down in an inflammatory situation and give praise for good assignments. An Assistant Principal is available usually only once a week at Joplin. A liaison teacher has been appointed by the Orange County Superintendent of Schools/Department of Education to function as the Principal or Assistant Principal dealing with student and faculty issues. Due to teacher contracts, teachers work 225 days a year, and the Orange County Superintendent of Schools/ Department of Education utilizes substitute teachers to cover the year round schedules. For the calendar year 2012, there were 103 disciplinary incidents usually in the substitute's class. Eight of these were considered serious (needing medical attention).²⁴ In the year 2011 there were 202 incidents in the classroom and 23 were considered serious.²⁵

As these juveniles are often younger than in the other detention schools, except part of Juvenile Hall, the lack of maturity is a major problem in their decision-making. The Orange County Grand Jury along with upper management of Joplin Youth Center feel that the number of disciplinary incidents is too high and warrants more supervision. The Orange County Department of Educational Programs and Services believes that the number of incidents in 2011 and 2012 is most likely not that much different than when Joplin High had a full time Principal. This remains a debatable point.

Considering that the Orange County Superintendent of Schools/ Department of Education receives money from the State for each student in attendance, money for a part-time Principal or Assistant Principal should be available to help decrease disciplinary incidents. Since educational budgets in the county and the state were cut in

²³ Grand Jury Inspection of Joplin Youth Center, (Dec.10,2012)

²⁴ Disciplinary Incidents Data from Joplin High School, (Jan.5, 2013)

²⁵ Ibid.

Detention Facilities Part II: How Do We Know If We Are Taking Care Of Our At-Risk Juveniles?

2008-2009, this issue has been a concern. How are these students to receive what Orange County Superintendent of Schools Department of Education contends is "...a world class education where every student succeeds"²⁶ if there are frequent disruptions in the classroom because of the excessive use of substitute teachers and the lack of administrative oversight?

Like other juvenile facilities, Joplin is using the program Thinking for a Change. They have a regular schedule and make-up sessions for this evidence-based program. It is still very difficult to expose the juveniles to all 25 lessons when they only stay at Joplin for about 30 days. Another program used at Joplin is Mobility Opportunities via Education (see glossary). A limited number of minors are allowed to job train off-site while working in an elementary school for mentally and physically challenged children. The Orange County Register reported one juvenile saying, "This helps me see that my life isn't as hard as I think it is."²⁷ Career skills are also taught in culinary classes, laundry, gardening and woodshop. Joplin was fortunate enough to have someone donate state of the art woodworking tools for carpentry.

Drug abuse education is covered in the Substance Abuse and Mental Health Assessment, Recovery, Relapse, Prevention Treatment program (see glossary). There is a part-time counselor and interns provide individual and group therapy on substance abuse. The Orange County Department of Education and the Probation Department have implemented the Face Everything and Recover program (see glossary). Thirteen minors are selected and mentored to become drug free. This program has transitional planning elements to prepare the juvenile for re-entry into society.

Discipline follows the same basics of all the juvenile detention centers with one difference. The boys wear different colored T-shirts representing their status at Joplin. Disruptive students are removed from the classroom, dorm or cafeteria. Consequences vary from early bed, loss of privileges, loss of points used in Joplin's Citizenship Level System. To be restricted is reflected in your shirt color. Everyone knows that severe infractions, including running away, results in a disciplinary hearing and transfer to Juvenile Hall. The minor's right to due process is followed. Joplin uses incentives to reward cooperative youth. The dorm is divided into five separate groups with a Deputy Juvenile Correctional Officer to direct them. The shirt color changes when a boy receives points for cooperation, helpfulness and other positive behaviors. An additional incentive is Joplin Money. Extra snacks and personal items beyond their usual allotment can be purchased with Joplin Money. Youths learn responsibility and citizenship from this program which benefits the community and society.

Correctional Health Services provide a nurse three days a week.²⁸ Joplin's isolated location causes concern when medical issues arise. In an emergency 911 is called. If a detainee needs further care or hospitalization, they are taken to a local

²⁶ Orange County Department of Education's Financial Report 2011-2012.

²⁷ Orange County Register: Troubled Youth Help Kids with Disabilities, July 5, 2012

²⁸ Orange County Grand Jury Inspection of Joplin Youth Center (Dec.10, 2012)

Detention Facilities Part II: How Do We Know If We Are Taking Care Of Our At-Risk Juveniles?

hospital (if an emergency) or Juvenile Hall. Boys are not sent to Joplin if they are allergic to bee stings, have severe asthma, mobility challenges, or brittle diabetes. These health conditions cannot be handled medically at Joplin.

Effectiveness of Detention

The average thirty days of detention is a short time to change an at-risk youth's attitude and behavior. On the other hand, a dramatic drop in detention population is evidence that shorter detention is more effective than longer. Relevant pieces of missing information are: (1) what happens after a youth finishes his probation; and, (2) how many youths graduate to jails after reaching age eighteen. Juvenile recidivism is measured only against those juveniles who break probation and/or commit offenses while on probation. Records of their youthful offenses do not follow them to jail. Thus the ability to measure recidivism is very limited and calls to attention the effectiveness of the County's efforts. This is a question well beyond this Grand Jury report.

FINDINGS

In accordance with California Penal Code Sections §933 and §933.05, the 2012 - 2013 Grand Jury requests responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of the Orange County Probation Department, the Orange County Probation Department Administrative and Fiscal Division, and the Orange County Department of Education ACCESS Program, the 2012 - 2013 Orange County Grand Jury has arrived at six principal findings as follows:

- F1 Juvenile Hall units M and O have very old windows. Also, the old toilet stalls in these units do not provide privacy.
- F2 Juvenile Hall and the other juvenile residential facilities have programs and activities to reduce recidivism. Most are not data-driven except Thinking for a Change, A.R.T. and some drug programs. The length of stay in these facilities, in most cases, is about 30 days; therefore, success rates are not documented by the Probation Department. The Research Department has dropped from 14 researchers to approximately 4.
- F3 All the budgets in the juvenile detention facilities have high variances in the food and "other" categories. These variances reflect poor financial accountability.
- F4 At Joplin, there were 103 classroom incidents, 8 described as serious in 2012. This is very high considering the student population is about 50 boys. There were 202 incidents with 23 considered serious in 2011.

Detention Facilities Part II: How Do We Know If We Are Taking Care Of Our At-Risk Juveniles?

- F5 The Orange County Superintendent of Schools/Department of Education does not provide a full time certificated Principal or assistant Principal at Rio Contiguo High School or Joplin High School. However, the Orange County Superintendent of Schools/Department of Education uses the Average Daily Attendance money generated by Youth Guidance Center and Joplin students' in seat attendance.
- F6 The incident between a male and a female detainee at Juvenile Hall in February, 2012, was investigated immediately by 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.
- F7 Orange County spends \$349,677 on a lease facility which is unoccupied.

RECOMMENDATIONS

In accordance with California Penal Code Sections §933 and §933.05, the 2012 - 2013 Grand Jury requests responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of the Orange County Probation Department, the Orange County Probation Department Administrative and Fiscal Division, and the Orange County Department of Education ACCESS Program, the 2012 - 2013 Orange County Grand Jury makes the following seven recommendations.

- R1 Probation Department management will budget for replacement windows and toilet stalls in Units O and M at Juvenile Hall. The toilet stalls, in particular, require an inordinate amount of repair. Replacement is needed to provide privacy without compromising security. (F1)
- R2 The Orange County Probation Department will approach the University of California, Irvine Criminology and Sociology Departments to create a data base to track programs and activities used in the detention centers; then decide if they reduce recidivism. (F2)
- R3 Administration of the detention facilities will adhere to their budget or explain the variances in detail. (F3)
- R4 The Orange County Superintendent of Schools/Department of Education will prioritize their budget to provide a part-time on-site Assistant Principal at Joplin High School a minimum of three times a week. (F4, F5)

Detention Facilities Part II:
How Do We Know If We Are Taking Care Of Our At-Risk Juveniles?

- R5 The Orange County Superintendent of Schools/Department of Education will not use a lead teacher to do the work of a Principal or Assistant Principal at any of the juvenile detention schools. (F4, F5)
- R6 The Orange County Probation Department will require experienced juvenile correctional officers to attend professional development seminars on the importance of monitoring themselves, juveniles, and new juvenile correctional officers while on duty. Refresher classes should be available at a minimum of every two years. (F6)
- R7 The Board of Supervisors must take action to either utilize the Los Pinos property or eliminate or minimize the expense of this vacant facility. (F7)

REQUIREMENTS AND INSTRUCTIONS:

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 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.

**Detention Facilities Part II:
How Do We Know If We Are Taking Care Of Our At-Risk Juveniles?**

(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 aspects of the findings or recommendations affecting his or her agency or department.

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

REQUIRED RESPONSES:

Responses Requested:

Orange County Probation Department: F1, F2, F3, F6, F7

Responses Required:

Orange County Superintendent of Schools/Department of Education: F4, F5

Orange County Board of Supervisors: F7

Responses Required:

Orange County Probation Department: R1, R2, R3, R6, R7

Orange County Superintendent of Schools/Department of Education: R4, R5

Orange County Board of Supervisors: R7

Detention Facilities Part II: How Do We Know If We Are Taking Care Of Our At-Risk Juveniles?

Glossary:

1. Aggression Replacement Training (ART) – cognitive behavioral intervention emphasizing improvement of social skills, moral reasoning, anger management and reduction of aggressive behavior
2. Alcoholics Anonymous (AA) – twelve step program which involves group therapy and leads to life changing behaviors and extinction therapy for alcoholic addiction.
3. Angels of Love – community based program where stained glass angels are made by individuals to bring hope to individuals or their families suffering through serious illnesses or the loss of a loved one.
4. ASERT – prides itself in assisting the juveniles with drug issues and preventing non-drug users from using illicit drugs. Step parallels this program and is used with female drug users.
5. Assessment, Recovery, Relapse, Prevention Treatment – a program used at Joplin for juveniles with drug abuse problems. The Orange County Department of Education through Safe Schools and Support Services budget provides a part-time counselor and interns for individual and group services for appropriate juveniles. This is on a contract basis only.
6. Baby Elmo – where parent and infant visits involve modeling parental behaviors for young fathers.
7. Decision Points – Much like the program Thinking for a Change, using cognitive skills to modify behavior and effect positive change in decision –making.
8. Face Everything and Recovery (FEAR) – a program at Joplin that pairs Department of Education and juvenile correctional officers with thirteen juveniles to encourage them to be drug free. Mentoring each juvenile is used to effect change.
9. Leash on Life Program – girls in Juvenile Hall volunteer to be “Puppy Mammams” for five to six weeks...They learn how to take care of a puppy assigned to them.
10. Mobility Opportunities via Education (MOVE) – allows juveniles at Joplin to volunteer at elementary school facilities for the mentally and physically challenged. The goal is to teach the juvenile to think of others not just himself.
11. Narcotic Anonymous (NA) – twelve step group therapy which leads to life changing behaviors and extinction of drug use.
12. Progressive Rehabilitation in a Dynamic Environment (PRIDE) – juveniles are given drug and alcohol abuse therapy; taken to obtain a driver’s license, ID card or Social Security Card; taught to fill out job or college applications; assisted with school work; helped to enroll in outside schools when the detainee is released.
13. Project Towards No Drug Abuse – drug prevention program for at risk youth using a curriculum designed to help youth develop self-control and communication through resources to resist drugs and improve decision-making strategies
14. Puppies and Wards (PAWS) a highly successful program where Juvenile Hall wards train rescue dogs which are adopted by the public. Youths work 10weeks in preparation for the dog’s adoption. Sometimes their own families adopt the dog.
15. Regional Occupation Program (ROP) -. opportunities to work in the community with businesses such as: carpentry, landscape, culinary arts, business technology, etc.
16. Substance Abuse and Mental Health Assessment Recovery, Relapse, Preventative Treatment – evaluation of particular drug abuse and factors that influence such

Detention Facilities Part II: How Do We Know If We Are Taking Care Of Our At-Risk Juveniles?

abuse. Urinalysis as scientific evidence assessment of drugs in the body. Use of strategies by a drug counselor to aid in recovery and avoidance of relapse. Elements in this program to prevent drug abuse in the first place.

17. Thinking for a Change (T4C) – evidence-based program with twenty-five lessons on how to make better life decisions. It is designed to prepare youth to re-enter and transition back into the community. Other therapy is tied to these lessons such as; remedial education, rehabilitative treatment, substance abuse therapy, anger management, and job skills.
18. The Youthful Transition Intervention Program (YTIP) - integrated services for incarcerated youth as they transition out of confinement and re-establish themselves in their home, school, community by offering services to reduce drug and alcohol abuse, decrease recidivism and delinquent behavior and prevent sexually transmitted diseases. They help youth increase job skills and assist parents to stay involved with their youth. This federally funded program was suspended in 2012 as the federal grant expired.

Jail Rehabilitation Programs -- Are They Effective???



2012-2013

Jail Rehabilitation Programs, Are They Effective???

SUMMARY

The 2012-2013 Orange County Grand Jury conducted an inspection of the Inmate Correctional Programs Unit, which provides opportunities for inmates to participate in rehabilitative programs while incarcerated in all five of the adult detention facilities in Orange County. These facilities are: (1) Intake Release Center, (2) Men's Central Jail, (3) Women's Central Jail, (4) Theo Lacy, and (5) James Musick. The Correctional Programs Unit was created in compliance with the California Penal Code, California Board of Corrections Titles 15 & 24 and related case law, to minimize the number of inmates who recommit crimes after release.

Current programs and resources include educational classes such as General Education Development (GED), English as a Second Language (ESL), vocational educational training (sewing, carpentry, welding, and food services), and "life skills" classes, such as, Parenting and Job Development. Other programs for personal improvement include: programs focusing on substance abuse recovery, domestic violence, anger management, religious and inspirational programs, general and law library services targeted re-entry services, and Canines Offering Life Lessons and Rewards (COLLAR). All are designed to maximize the chances of an inmate's successful transition into the community upon release. A number of new programs such as, Parent/Child Visiting, In Custody Transition, and Warehouse Worker Training are being considered.

The Sheriff's Department has expressed concern over the increase in jail population due to passage of AB109. AB109 transfers responsibility from the state to the county for incarcerating low security risk inmates. Limiting the jail population to the space available has brought the issue of recidivism to the forefront. Although current management is providing many programs intended to rehabilitate, at a cost of about \$5 million per year, their effectiveness in reducing recidivism is absolutely unknown due to the lack of a system to compile measurable data and a clear definition of recidivism.

Orange County Sheriff's Department (OCSD) Correctional Programs management and the criminology and sociology programs at the University of California at Irvine (UCI) have initiated conversations whereby the two entities could eventually work together to create a scientific statistical analysis of the Correctional Programs' efforts.

REASON FOR STUDY

Spending "about" \$5 million per year on Correctional Programs without any evidence that this money has rehabilitated a single inmate is unacceptable. It is hopeful at best and wasteful at worst. This study demands accountability for efforts and money directed towards reducing recidivism.

The Correctional Programs Unit was created in compliance with the California Penal Code, California Board of Corrections Titles 15 & 24 and related case law, to

Jail Rehabilitation Programs, Are They Effective???

minimize the number of inmates who recommit crimes after release. The effectiveness of these programs is of vital concern from a financial and human perspective.

METHOD OF INVESTIGATION

The 2012-2013 Grand Jury engaged in the following activities:

- Visited all the facilities.
- Interviewed the managers and the supervisors of the facilities by phone.
- Reviewed listing of current programs.
- Examined successful programs in other counties and state prisons.
- Reviewed limited financial records as provided by Correctional Programs.

BACKGROUND AND FACTS

Finances

The 2012/2013 Correctional Program's Unit's annual operating budget appears to be about \$5 million. It is self-funded through revenues generated from the inmates via the sale of commissary products, telephone commissions, education and vocational contracts with Rancho Santiago Community College District, rent on a building it owns, interest on past earnings held in reserve, Orange County bankruptcy repayments, sale of capital assets, and other miscellaneous revenues. Table 1 and Table 2 show the revenue budget history and expense budget history for the last five years.

Table 1 – Revenue Budget History Fiscal Year (FY) 2007-08 through FY 2011-2012¹

Revenue Type	FY 2007-2008 Amount, \$	FY 2008-2009 Amount, \$	FY 2009-2010 Amount, \$	FY 2010-2011 Amount, \$	FY 2011-2012 Amount, \$
Interest	402,977	181,990	74,062	34,681	30,995
Telephone Commissions	2,624,091	2,262,860	2,406,001	2,476,372	2,495,318
Education Services	358,674	388,126	333,579	282,257	252,893
Rental and Administration	262,147	247,221	198,865	308,352	313,824
Miscellaneous	51,584	55,400	49,618	47,529	44,544
Commissary Profits Transferred	650,000	415,916	700,000	500,000	500,000
Total Incoming Revenue	4,349,473	3,551,513	3,762,124	3,649,191	3,637,574
From Fund Balance Available (FBA)	(177,389)	1,569,022	1,222,210	953,265	369,222
Total Revenue	4,172,084	5,120,535	4,984,334	4,602,456	4,006,796

Table 2 – Expense Budget History FY 2007-08 through FY 2011-2012²

¹ Provided by Correctional Programs Unit Staff on April 4, 2013. "Actual" budget numbers used.

² Provided by Correctional Programs Unit Staff on April 4, 2013. "Actual" budget numbers used.

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Expense Type	FY 2007-2008 Amount, \$	FY 2008-2009 Amount, \$	FY 2009-2010 Amount, \$	FY 2010-2011 Amount, \$	FY 2011-2012 Amount, \$
Salaries & Benefits	3,114,454	3,619,289	3,716,760	3,444,866	2,931,998
Services & Supplies	1,057,630	1,501,246	1,267,574	1,157,589	1,074,798
Total Expenditure	4,172,084	5,120,535	4,984,334	4,602,455	4,006,796

As seen in Tables 1 and 2, the budget for the last five years was between \$4 to \$5 million, with about \$3.5 million from various sources of revenues, largely from telephone commissions and commissary profits. It is clear that every year the incoming revenue is less than the required expenditure, except for FY 2007-2008, and, therefore, a substantial amount of money from the Fund Balance Available (FBA) account is used to make up the difference. The FBA account has been declining as shown in Table 3.³

Table 3 – FBA Account Balance History

Fiscal Year	FBA Balance, \$
2007-2008	9,343,954
2008-2009	7,783,995
2009-2010	6,565,044
2010-2011	5,617,243
2011-2012	5,377,417

The FBA account was established more than 25 years ago with seed money from found funds dedicated to inmate rehabilitation. Dedicated funds are referred to as “trust funds” in county accounting. The future balance is dependent upon the wisdom of the Correctional Programs to balance future budgets.

Staff

The Correctional Programs staff of 34 employees earn on average about \$86,235 per year. They plan, coordinate, conduct and evaluate activities provided at each of the Orange County’s five adult jail facilities: (1) Intake Release Center, (2) Men’s Central Jail, (3) Women’s Central Jail, (4) Theo Lacy, and (5) James Musick. About 1,100 volunteers from religious and community organizations work with the Correctional Programs Unit to provide many programs at no cost to the county, many of which are of spiritual nature.

Current Programs

The following programs are currently offered at the stated facilities:

³ Provided by Correctional Programs Unit Staff on April 2, 2013.

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Educational Programs

- Adult Basic Education (ABE) at all five facilities
- GED Instruction/Testing at all five facilities
- High School Diploma at all five facilities
- English as a Second Language (ESL) at Men's Central Jail & Theo Lacy
- Working for Inmate Literacy Now (WIN) at all five facilities
- Money Matters at all five facilities

Educational programs may help increase future earning power for inmates. Even though GED holders have lower wages than a person with a high school diploma, their opportunities are still significantly better than those with neither a GED nor a diploma. Attaining an education while in jail may bridge the wage gap and provide minimum wages after incarceration. Though the Orange County Correction Programs Unit has no evidence of the effectiveness of its GED program, it expresses a "feeling" that it benefits the inmates in some manner.

The Correctional Programs Unit collaborates with Rancho Santiago Community College District (RSCCD) to provide inmates educational as well as vocational programs. The Correctional Program collects money from RSCCD which receives funding from the California Department of Education for each inmate for each day he or she takes classes sponsored by RSCCD. Though there is no cost to the Correctional Program, this is not to say there is no cost to the taxpayers. Again, whether this program reduces recidivism is completely unknown.

Vocational Programs

- Introduction to Software Applications at Men's Central Jail, Women's Central Jail, Theo Lacy, & James Musick
- Workforce Readiness at all five facilities
- Institutional Food Preparation at Theo Lacy
- Welding at James Musick for male inmates only
- Cabinetry at James Musick for male inmates only
- Commercial Sewing at James Musick for female inmates only

It is believed that inmates that receive vocational training while incarcerated are more likely to be employed after release. Correctional Programs Unit has no verifying data to support such hopes.

General Resources

- Religious Services at all five facilities
- Books from the Law Library located at the Commissary distributed to all five facilities
- Two libraries located at Theo Lacy & James Musick

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- Book exchange available at all five facilities

Library programs seek to support the other rehabilitative programs. In addition to entertainment reading, books are distributed concerning job development skills, parenting, overcoming addiction, goal setting, and a variety of other self-improvement topics. Magazines and newspapers further the inmates' exposure to philosophies and possibilities they would not otherwise consider. Reading materials are available in English, Spanish, and Vietnamese.

Behavior Modification Programs

- “Domestic Violence” at the Intake Release Center, Theo Lacy, & James Musick are designed to address key topics related to domestic violence issues for both victims and batterers
- “Thinking for a Change”, is an evidence based program, offered at all five facilities (this 25 lesson program is designed to assist inmates in changing their own negative ways of thinking. Individuals who start the classes in custody continue to attend classes post release with Probation and many other residential community providers)
- “Anger Management” at Men’s Central Jail & Intake Release Center helps inmates identify their own physical and mental symptoms of anger while providing healthy coping skills
- “Criminon” at Men’s Central Jail, Women’s Central Jail, Intake Release Center and Theo Lacy, is a self-study course that provides the inmates with basic principles on the subject of morals and honesty (this program also addresses literacy, study skills, communication, drug rehabilitation and prevention, personal values and integrity)

Substance Abuse Programs

- Alcoholics Anonymous at all five facilities
- Narcotics Anonymous at all five facilities
- Substance Abuse Class at all five facilities
- AIDS Prevention at Intake Release Center & Theo Lacy
- Mental Health at Intake Release Center

Life Skills Programs

- Workforce Preparation at Men’s Central Jail & Women’s Central Jail: provides current job search techniques, emphasizes resume styles, interviewing strategies, communication practices and topics that are critical for employment success.
- Faith Based Parenting at Men’s Central Jail, Women’s Central Jail, and Intake Release Center: is an eight week parenting class with a faith-based component, covering topics such as how to establish a strong family

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foundation, how to communicate with children, mother and father roles, single parenting, and how to reunite with their children after release.

- Positive Parenting at all five facilities: Assists parents in child management techniques, including various theories in developmental psychology as well as parental responsibilities.
- Mothers of Preschoolers (MOPS) at James Musick: is an international organization that focuses on child rearing issues, separation from children and personal issues that interfere with forming healthy relationships. Group members are given referrals to continue attending similar MOPS meetings after release.
- Self-Esteem training at Intake Release Center & James Musick: is provided for female inmates to help rebuild their self-esteem through several techniques including everyday activities.
- Marriage classes at Intake Release Center: helps spouses to interact in a more positive manner.

Re-entry Programs

- Assessments at all five facilities.
- Great Escape/Re-entry (Pre-release) Planning at all five facilities
- Discharge Planning at all five facilities (for high risk to reoffend inmates only)
- Probation 101 at Men's Central Jail
- Great Escape Resource Center at 909 N. Main St, Santa Ana (Post release)
- Mentoring Programs at Men's Central Jail, Intake Release Center, & Women's Central Jail
- Orange County Re-entry Partnership: A structured Board of Directors meets monthly and the General Membership meets bi-monthly to discuss Inmate Re-Entry issues. Meetings are at the Great Escape Resource Center at 909 N. Main St, Santa Ana.
- Lights on at Men's Central Jail during 11:00pm – 5:00am
- Veteran Services at all five facilities
- Back on Track (Employment) at all five facilities. Inmates are instructed on proper business attire, interviewing skills and resume writing. Upon release they can meet with a Re-Entry Coordinator at the Great Escape Resource Center to discuss job placement referrals.
- COLLAR at James Musick is the newest of the programs. There have been several Inmate Dog Training Programs in the United States, with the closest ones being COLLAR at the Orange County Juvenile Hall, and TAILS in San Mateo, California. The inmates learn to work with the dogs to train them to obey basic commands and socialize the animal within the confines of a jail. The program has not yet been monitored in Orange County to show its effect on recidivism; but, anecdotal stories from other locations indicate great success. In any event, there are some benefits to

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society such as: (1) unwanted dogs are given a second chance, (2) dogs are made available to individuals wanting a trained animal, (3) the inmate receives skill in a viable occupation and (4) perhaps the most important is that inmates, often for the first time in their lives, feel the unconditional love of a dog. Additional costs for dog food, kennels, veterinary services and trainer(s) salaries are expected.

These re-entry programs and services are all designed to assist inmates both in custody and post release to help them achieve a successful reintegration back into society, thus to increase public safety, and to reduce recidivism rates.

Future Programs

The following programs are being considered at the stated facilities:

- A Parent and Child Visiting Program: is being considered at the James Musick facility. It would be a pilot program to promote a healthy bond between an incarcerated parent and child. If successful, the program will be implemented at all facilities. The program would allow two weekly contact visits inside a secure area, one hour maximum per visit, supervised by qualified staff. Incarcerated parents must meet certain criteria to be considered for the program. No additional cost is expected for this program.
- In Custody Transition Program at James Musick: Adopting the concept of an In-Custody Drug Treatment Program promoted by the California Department of Corrections and Rehabilitation, the Correctional Programs Unit is proposing a new In-Custody Transition Program to be located at the James Musick facility. This program is for a maximum of 50 of the high risk to re-offend male population only. The program is a sixty day curriculum, designed to enhance an inmate's chance of successfully reentering society upon release. The sixty day curriculum includes:
 - Substance Abuse and Relapse Recovery
 - Thinking for a Change
 - GED Preparation
 - Probation 101
 - Computer Business Skills
 - Offender Workforce Preparation
 - Discharge Planning and Realistic Goal Setting

Beside the initial cost of converting the recreation tent to 50 beds and classrooms, additional operating cost is not expected since the existing Inmate Services Re-entry staff will be used.

- Warehouse Worker Training at the Commissary: When implemented, this program will not only provide a few inmates with useful skills to increase the inmate's employability upon release, but also will help reduce some of the operating cost at the commissary.

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Program Participation

Inmates may voluntarily participate in any program offered, depending on their security classification level. They may enroll in classes by completing inmate message slips, speaking with Education Coordinators, or consulting with a Life Coach. For inmates who cannot participate in programs due to their classification level, staff provides them with self-study packets. The process of determining who participates in classes and the number of inmates who can attend is different at each facility. Guidelines for each facility are stated below:

Intake Release Center (IRC): Staff recruits in the housing areas, in other classes, and via inmate message slips. All female inmate classes held in the IRC accommodate 32 students. Only low security risk female inmates are allowed to attend. There are two GED classes held for moderate security risk male inmates in an IRC classroom, which accommodates up to 15 students.

Men's Central Jail: Program staff strives to maintain full classes and constantly recruits inmates when class room space becomes available. All classes in the Men's Jail are held in the second floor classrooms which accommodate up to 24 students. For the vocational computer classes, however, participation is limited to 16 students. Both minimum and moderate security risk inmates are allowed to attend all the classes at the Men's Jail.

Women's Central Jail: All women's classes are held in the second floor classroom. Program staff strives to maintain full classes and recruits inmates when the class room becomes available. The classroom accommodates up to 24 students. For the vocational computer classes, however, participation is limited to 12 students. Only minimum security risk inmates are allowed to attend all the classes at the Women's Jail.

Theo Lacy: The classes at Theo Lacy are restricted by security classification and size of the classroom. On average, 30 inmates receive a pass to attend classes. Additional inmates are recruited as needed to fill the classes, if the attendance falls below 24 inmates. The one exception for class size would be the computer class, which can only accommodate up to 24 students. The staff strives to maintain an acceptable level of 20 to 24 inmates in this class. Food Service and Computer classes are not "open ended", meaning, if an inmate leaves the class their seat will not be filled until a new class begins. The classes offered at Theo Lacy are only for the inmates classified as low security risks. If security clears these inmates to participate in classes at the Programs building, they will be allowed to attend. Participation is entirely voluntary.

James Musick: All of the inmates for the occupational classes (Sewing, Cabinet Shop, Welding Shop, and Workforce Readiness) are chosen by the Work Deputy. The instructors may submit names; however, the Work Deputy makes the final choice as a result of the inmate's classification. Participation in continuing education classes (GED, ESL, parenting, Money Matters, substance abuse, and Great Escape) are selected from message slips and recruited by the Program staff. On average, 18-20 inmates are

Jail Rehabilitation Programs, Are They Effective???

allowed to attend Continuing Education classes while only 10-12 are allowed to attend Vocational classes.

Correctional Programs Effectiveness

Although management has done an excellent job providing many programs intended to reduce recidivism, their effectiveness is unknown due to the lack of a system to compile data and measure results. Further, there is a lack of support among the staff's rank and file. A significant number of the guards view the rehabilitation programs as a waste of time, money and energy.⁴ As a result, cooperation in the jails is not always there. For example, a security guard may fail to deliver an inmate to a rehabilitation class on time, if at all. Without some kind of tangible proof of rehabilitative efforts, it is understandable why some guards may scoff at the program when they see the same faces being incarcerated over and over.

The Correctional Programs Unit has no research department to measure changes in recidivism attributed to any particular program. To their credit, attempts have been made to track the seventeen percent of the inmates most likely to reoffend. These reoffenders tend to be people addicted to drugs and alcohol as well as those committing petty thefts. Reoffenders also represent the greatest cost because of their repeated incarcerations. The Correctional Programs Unit should be commended for its efforts to accomplish what they do with the talent available on their staff. Investment in sophisticated statistical research and analysis in other county agencies has seen huge financial returns.⁵

Among the missing elements for measuring the Correctional Programs are:

1. The County has no definition for recidivism and no means of tracking released inmates who might be re-incarcerated in other counties or states.
2. The monitoring of inmates is not comprehensive. Only about 17 percent of the inmates are being tracked. These are the "high risk offenders".⁶
3. Other than segregating "high risk offenders", there is no categorization of inmates. Consideration should be given to several types of differences among inmates:
 - Mental and emotional capability – Half the Orange County jail population have an IQ over one hundred and half below. Frustration over issues above or below one's capability yields

⁴ This view point was repeated to this Grand Jury by both sworn and unsworn jail employees. It was not stated with malice but as a matter of fact.

⁵ The Department of Child Support Services increased its collection of child support by approximately 50 percent by careful statistical analysis of who pays what and under what conditions. This has amounted to hundreds of millions of dollars. See 2012 - 2013 Grand Jury report, "**Best Interest Of The Child**" **Lost Child Support Costs \$1.3 Billion.**

⁶ High risk offenders (not to be confused with high security risk) are so classified based a numerical score assigned to 1) the age when first committed a felony, 2) how many priors and 3) current age. They tend to be alcohol and drug addicted individuals as well as those committing petty thefts.

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poor results in an educational process. Likewise, emotional skills must be considered. For example in the extreme, submariners sharing cramped quarters for long periods of time must be emotionally evaluated before placed in such a situation. Emotional intelligence is an important consideration.

- Age – People of different ages simply respond in different ways. Learning is maximized when a mix of educational methods are used.
- Race (cultural and gang issues) – Race here is not a discriminatory concern, but rather a security risk. Putting a white supremacist with a black power inmate is obviously dangerous and not done. Carrying this further, sensitivity to cultural issues is vital to effective communications. To that point, the US Navy Language School in Monterey California devotes significant time to cultural issues when teaching language. For example, arms akimbo to an American may represent an emotion of questioning frustration, while to an Eastern European, that posture carries a message of extreme belligerence well beyond most American's comprehension. When racial differences are not adequately addressed, the associated risks affect all inmates and staff, regardless of race.
- Type of offense (e.g. violent or non-violent) – A wife beater may have different issues than an inmate doing time for driving while intoxicated.
- Prior incarceration in Orange County or elsewhere – An inmate's history of offenses also bears attention. It may be that some inmates have a history of being incorrigible. Taxpayers' money may be better spent on more receptive inmates.
- AB 109⁷ status – These inmates will deserve special tracking as they represent a classification of inmates never before incarcerated in county jails.
- Drug and Alcohol addiction – In one sense this is an issue of single concern, i.e. the addiction itself. In another sense, it may be the driving force for all other crimes resulting in the inmate's incarceration making any and all other education and counseling programs irrelevant to the addict.

The jails have long classified and separated inmates to minimize violence. Such classifications have included among other things gang membership, race, and proclivity toward violence, mental and emotional status. Changing mindsets requires sensitivity

⁷ AB 109, since passage in 2011, has increased jail population in Orange County by approximately 950. In the future, AB 109 inmates classified as non-serious, non-violent, and non-sexual (non-non-non's) are to be incarcerated in the county jails instead of the state prisons. Not only do these inmates constitute additional jail population, the sentences may be of longer duration. AB 109 inmates will need rehabilitation attention different from typical jail inmates sentenced to about 30 days.

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to human differences. Psychologists counseling conflicted divorced parents raising children found race, culture, subcultures, and education among other variables to be of vital concern if the counseling was to be effective.⁸ Likewise, changing criminal mindsets needs to account for human differences.

The Correctional Programs Unit has stated that in addition to rehabilitation, they have an obligation under Title 15 to give inmates an opportunity to rehabilitate themselves. This Grand Jury opines that money and manpower are far too valuable to simply be used to occupy idle hands and minds. Every dollar and man hour spent by the Correctional Programs Unit should be directed towards effective rehabilitation.

Currently, the only measurable success is counting graduates of the GED program. During the fiscal year 2011/2012, 169 out of approximately 7,000 inmates graduated with a GED. This amounts to 2.4 percent of the total inmates. How many of the inmates were incarcerated without a high school diploma or GED is unknown. The low number of graduations is partially due to the short period of time the inmates are in custody. The impact of earning a GED to returning to jail is unknown.

Orange County is one of six counties in the nation selected by the Urban Institute and the National Institute of Corrections to participate in the "Transition from Jails to Communities" (TJC) initiative. The Orange County Sheriff's Department (OCSD) was tasked to work on researching and developing a system to compile data that would track recidivism rates. Even though the TJC initiative was completed at the beginning of 2012, the OCSD Correctional Programs and Re-entry Units has yet to provide a data system that will provide the necessary tracking data, which would be a useful step towards some meaningful in depth analysis.

OCSD has initiated conversations with the University of California at Irvine (UCI). It is hoped that UCI will add an objective perspective to what the Correctional Programs Unit is doing and apply sophisticated statistical analysis to the County's efforts. How a marriage between UCI and the OCSD Correctional Programs Unit will be established is beyond this study other than to applaud the effort to address a most obvious problem.

This Grand Jury recognizes that the County's rehabilitative efforts are well intended. However, a research program is absolutely vital to monitor effectiveness. Proceeding without sophisticated data is but blind effort and a waste of precious resources. If necessary, assets should be shifted from some existing programs to fund analysis of the effectiveness of the remaining programs.

⁸ **THE NEW BEGINNING PROGRAM FOR DIVORCING AND SEPARATING FAMILIES: MOVING FROM EFFICACY TO EFFECTIVENESS** by Sharlene A. Wolchik, Irwin N. Sandler, Sarah Jones, Nancy Gonzales, Kathryn Doyle, Emily Winslow, Qing Zhou, and Sanford L. Braver, published in **Family Court Review**, Vol. 47 No. 3, July 2009 page 428

Jail Rehabilitation Programs, Are They Effective???

FINDINGS

In accordance with California Penal Code Sections 933 and 933.5, the 2012/13 Grand Jury requests responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of the Inmate Services Division, the 2012/13 Orange County Grand Jury has arrived at eleven principal findings as follows:

- F1 The FBA balance has been declining as the expenditure has exceeded revenue since 2009. This problem is enhanced with the diminishing income from interest and OC bankruptcy repayment. What will happen to the Correctional Programs when the FBA balance becomes zero is unknown.
- F2 This Grand Jury found that the current staff of the OCSD Correctional Program Unit is providing numerous programs designed to educate and mentor inmates during incarceration.
- F3 The County has no definition for recidivism.
- F4 Neither the effectiveness of any **particular** rehabilitation program nor the Correctional Programs Unit as a whole is known.
 - A. **Particular** programs refers to GED instruction, Money Matters, Introduction to Software, Institutional Food Preparation, Domestic Violence, Thinking for a Change, Substance Abuses classes, etc.
 - B. "As a whole" refers to the overall effectiveness of the Correctional Programs Unit in reducing recidivism.
 - C. "Effectiveness" refers to both ending the human suffering of re-incarcerating the same individual over and over again, and the economics of capturing, judging and supporting in jail the same individual again and again.
- F5 There is very limited classification of inmates regarding issues of age, race, type of crime, etc. as these differences might apply to rehabilitation.
- F6 The new programs being considered by the OCSD Correctional Programs Unit staff are not accompanied with metrics to measure the effectiveness.
- F7 The "Transition from Jails to Communities" program was completed at the beginning of 2012. The results have yet to be released and utilized.
- F8 There is a lack of universal acceptance by the rank and file of the OCSD of the benefit of rehabilitation programs.

Jail Rehabilitation Programs, Are They Effective???

- F9 UCI has professional and academic talent in the area of criminology and social studies which could play a significant role with researching data about the effectiveness of rehabilitation programs.
- F10 OCSD Correctional Programs could benefit by sophisticated statistical analysis from UCI.
- F11 The effectiveness of jail sponsored rehabilitation programs could be financed by closing down dubious programs and re-directing those monies towards research and statistical analysis of the remaining rehabilitation programs.

RECOMMENDATIONS

In accordance with California Penal Code Section 933 and 933.5, the 2012/13 Grand Jury requires responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of the Inmate Services Division, the 2012/13 Orange County Grand Jury makes the following nine recommendations.

- R1 Correctional Programs Unit must address the budget issue immediately. "Addressing the budget" refers to:
- A. The continual draw against the "Fund Balance",
 - B. Deployment of funds to a research team to determine the best use of available money – even if that means terminating some existing rehabilitation programs in order to determine the effectiveness of others. (F1, F2, F11)
- R2 The Sheriff's Department must encourage the establishment of a meaningful definition for recidivism. (F3)
- R3 Continuation of **any** correctional program without metrics shall be maintained at minimum cost until a meaningful program to assess its effectiveness can be implemented no later than Dec 31, 2013. (F1, F2, F3, F4, F6)
- R4 This Grand Jury recommends new programs be implemented **only** if metrics are attached. (F1, F2, F4, F6)
- R5 Rehabilitation programs must be tailored for differences between inmates: age, race (cultural and gang issues), type of offense, etc. (F2, F5)
- R6 The Correctional Programs Unit shall continue to compile the necessary data started with the TJC initiative. (F7)

Jail Rehabilitation Programs, Are They Effective???

- R7 The Correctional Programs Unit should develop a partnership with the University of California at Irvine (UCI) criminology department. The purpose would be to aid in measuring the efficiency of the entire Correction Programs Unit and individual programs in particular. The measure of effectiveness must gauge the change in recidivism. The statistical support sought from UCI must measure the financial cost of supporting those who recidivate and the savings realized by preventing recidivism. (F4, F6, F9, F10)
- R8 If the partnership with UCI fails as recommended in R7 above, a research department must be established by the Correctional Programs Unit to perform the statistical analysis as outlined in R7 above. (F3, F4, F5, F6, F11)
- R9 The Sheriff's Department must demand and gain positive commitment and cooperation from its entire staff for rehabilitation. (F8)

REQUIREMENTS AND INSTRUCTIONS:

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 therefor.

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

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

Jail Rehabilitation Programs, Are They Effective???

- (5) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- (6) 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 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 the Penal Code Section §933.05 are required from:

Responses Required:

Orange County Sheriff Coroner Department: F1, F2, F3, F4, F5, F6, F7, F8, F9, F10, F11

Responses Required:

Orange County Sheriff Coroner Department: R1, R2, R3, R4, R5, R6, R7, R8, R9

An Investment And Compliance Review Of The Orange County Treasurer

An Investment And Compliance Review Of The Orange County Treasurer



2012-2013

An Investment And Compliance Review Of The Orange County Treasurer

SUMMARY

Orange County filed bankruptcy on December 6, 1994, and recorded a loss of \$1.7 billion, the largest loss by a local County Government investment pool.

The bankruptcy was a result of the County Treasurer's wrong-way interest rate gamble with public funds, and a leveraged investment strategy ignoring the wisdom that high return investments are invariably high risk. The Treasurer circumvented its fiduciary responsibilities by manipulating the \$7.6 billion investment pool with a strategy very few people in the County were aware of and even fewer understood. The Treasurer was risking funds belonging to the Orange County Government, Cities, Schools and Special Districts. Many of the approximate 200 Orange County agencies were required to invest their funds in the County Investment Pool. Other municipalities attracted by the high interest rates voluntarily joined.

The Treasurer's investment strategies stemmed from the loss of tax revenue that began with Proposition 13 and initiatives that severely limited the ability for local government to raise taxes. The pressure of these initiatives led to the State's decision to loosen municipal investment guidelines, clearing the way for the Treasurer to use pooled funds to borrow money, invest in derivatives and long-term bonds that paid high yields. The Treasurer freely pledged borrowed money as collateral.

The Investment Pool increased from \$7.6 billion to \$20.6 billion as the Treasurer borrowed \$2 for every \$1 on deposit increasing the investment pool by \$13.0 billion. The Treasurer borrowed funds to invest in securities with yields inversely related to interest rates. In 1994, interest amounted to twelve percent of revenue for Orange County compared to three percent for all other California counties. The interest earned from this strategy was a major source of revenue to the general fund. The Treasurer projected a 35 percent contribution from interest earnings to the general fund for fiscal year 1995.¹

In 1994, the Federal Reserve Board began a series of interest rate increases that negatively affected the bond market. In 1994, the Orange County Supervisors realized that the portfolio was sensitive to interest rate changes and future interest rate adjustments were difficult to predict. Orange County's heavily leveraged interest-rate portfolio suffered a huge impact from the sudden increase in interest rates. The County was unable to sell off the risky securities as lenders threatened to seize pooled assets held as collateral. The County did not have the capital to withstand a "run on the investment pool" by local government depositors and soon after the first lender decided to take action, the County government declared bankruptcy. The bankruptcy prevented pooled participants from withdrawing funds, resulting in \$7.6 billion of frozen assets belonging to Orange County cities, school districts, transportation, water, and sanitation agencies.

¹ The second annual California forum report dated March 18, 1998

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The bankruptcy forced the Board of Supervisors and State officials to respond to this crisis by enacting legislation directing local government to invest based on the principals of safety, liquidity and then yield. The legislators in 1995 introduced and enacted systems of checks and balances requiring the County to establish oversight committees with certain reporting responsibilities. In accordance with California Government Code Section 53600 and the Orange County resolution, the Treasurer has been charged with the authority to invest and re-invest county funds. The Treasurer retains the authority to amend the investment policy guidelines and procedures in order to comply with its responsibilities as chief investment officer and banker of county funds. The Treasurer annually prepares an Investment Policy and delegates the investment authority which is then reviewed by the Oversight Committee and approved by the Board of Supervisors.

The Treasurer plays a major role in the financial infrastructure of local government and is the custodian of county funds. While the changes may restrict some investment choices and require greater oversight, the Treasurer still maintains flexibility for making prudent investment choices within the investment policy guidelines. This freedom of choice allows the Treasurer to select investments that are best suited for the individual pooled participants.

REASON FOR STUDY

The most recent Grand Jury review of the office of the Treasurer was in 2008. The Grand Jury, in 2008-2009, was concerned with the Treasurer's investment position in the Structured Investment Vehicles market. Structured Investment Vehicles are pooled investment assets that attempt to profit from credit spreads between short-term debt and long-term structured products such as asset backed securities.

Asset backed securities are the buying and bundling of loans consisting of mortgages, student debt and commercial loans and sold to investors. Often, a bundle of loans is divided into separate securities with different levels of risk, liquidity and transparency. Funding for these investments comes from the issuance of commercial paper that is continuously renewed or rolled over. This type of investment carries a very slim margin for error. One source of risk comes from the fact that the long-term security might lose value when compared to short-term investments. If this happens, one is essentially paying a higher rate of interest than the asset is earning. This is disastrous for a pooled investment portfolio.

In 2009, the Whistlejacket Structured Investment Vehicle defaulted as investors stopped buying hard to value securities as losses on subprime mortgages mounted.

The Structured Investment Vehicle could not sell short-term debt to finance high-yielding assets, forcing the County to liquidate its position for a loss of \$7.6 million on August 19, 2010. The Comprehensive Financial Annual Reports as (CAFR) as of June 30, 2012, reported that the current Orange County Investment Pool does not include investments in derivatives and prohibited Structured Investment Vehicles.

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The 2008-2009 Grand Jury also cited a breakdown in the oversight process related to the pooled investment selections and compliance.

METHOD OF INVESTIGATION

Penal Code 925-933.6 provides the Grand Jury with the authority to access all required documents necessary to investigate the financial stewardship responsibilities of the Orange County Treasurer. The focus of this study was to evaluate the current investment practices and responsibilities of the Orange County Treasurer. For each discipline evaluated, the Grand Jury collected policies, state statutes, and directives related to the issues under study. The reports and documents collected demonstrate the approved investment and procedural choices made available to the Treasurer /Tax Collector. The analysis evaluates the systems the Treasurer employed to assess the relative safety, liquidity and yield. The Grand Jury researched the following resources for this study:

- *Treasurer and staff education and experience*
- *Weighted average to maturity and restrictions*
- *Portfolio yields and market values*
- *Credit quality portfolio allocation and restrictions*
- *Internal Audit Reports and recommendations*
- *Bylaws and statutes*
- *Investment goals, conditions and restrictions*
- *Investment choices and asset allocation requirements*
- *Compliance reports*
- *Follow-up audit reports*
- *Investment composition summary*
- *Approved Issuer list*
- *Information systems*
- *Standard and Poor's investment pool ratings*
- *Investment evaluation platform and external investment support*
- *Interviews with the Treasurer, staff and auditors*

BACKGROUND AND FACTS

The Treasurer is a major principal in County financing. The Treasurer is an elected official and the Orange County banker in charge of receiving and investing County, City, School District and Special Districts funds. Pool participants deposit cash receipts and revenues with the County Treasurer, which are managed in pooled accounts under the auspices of the Treasurer's staff. The Treasurer is also responsible for the collection of taxes and revenues in order to satisfy the mandates imposed by the State of California.

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This examination of the Treasurer provided the Grand Jury with an overview of the County Investment Policy, and the process used to determine if the investment choices are compliant. The review also provided an understanding of the methods used by the Treasurer to measure the risks and rewards associated with investment strategies that ideally work toward achieving and maintaining appropriate levels of success.

The investment requirements and strategies for the \$6 billion portfolio are extremely conservative and are required to conform to all State statutes and County resolutions. The Treasurer manages the County's investments by combining certain County funds and funds of other participating members into pooled accounts. The Treasurer invests and manages public funds in a manner that will provide security of principal as well as achieve yield to meet the cash requirements and liquidity schedules of pool members. The Treasurer also oversees a number of functions related to bonds issued by approved local entities.

Orange County government provides many essential services that affect every county resident while continuing to manage the many challenges of shrinking revenues. As with other Counties and jurisdictions, the state of the recent economy, and past experience have prompted the Treasurer to reassess its operations and consider cost saving measures for doing business while managing its many diverse responsibilities.

THE TREASURERS MISSION STATEMENT

IMPLEMENT BEST BUSINESS PRACTICES AND FISCAL ACCOUNTABILITY WHICH MAXIMIZE VALUE, MINIMIZE COSTS AND PROVIDE EXCELLENT TAXPAYER/CUSTOMER SERVICES TO EXTERNAL CUSTOMERS

TREASURER/STAFF EXPERIENCE AND EDUCATION

The Treasurer is a Certified Public Accountant with 16 years of public service experience in managing city finances and investment portfolios. The Treasurer earned a degree in Business Administration with an emphasis in Accounting from Washington State University and has achieved numerous industry Certifications. Industry related certifications serve as a benchmark of competency and signify that the designee has demonstrated the knowledge and skills required to execute critical functions related to their position.

Certification is the process by which an association or industry grants recognition to an individual who has met specific work qualifications or performance standards. Performance standards identify the knowledge an individual needs to advance, and is the basis for assessment and certification. The Treasurer has achieved, and maintains the following certifications:

- Certified California Municipal Treasurer (CCMT)

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This certification was established for current financial professionals working in the field of public finance in an appointed or elected capacity. Municipal finance, like other professions, requires special knowledge and skills. This certification recognizes professional attainment, and insures that continuing education requirements are completed. The CCMT program is designed to advance the professionalism of a municipal treasurer, finance officer, or chief financial officer of municipalities.

- Certified Public Finance Administrator (CPFA)

This certification is awarded by the Association of Public Treasurers. The individual awarded this certification is an elected or appointed treasurer, deputy or assistant treasurer, responsible for the performance and supervision of investment, debt and treasury activities. The Treasurer also completed the requirements for the advanced certification for the CPFA. The advanced program focused on risk analysis, investment duration and the quantification of risk in a portfolio. The Treasurer is the current president of the Association of Public Treasurer of the United States and Canada, and the past President of the California Municipal Treasurers Association.

- Certified Public Funds Investment Manager (CPFIM)

The CPFIM program is provided by the Association of Public Treasurers of the United States and Canada. This certification recognizes the designees experience in investment policies, internal controls and mitigating risk. The Treasurer has also completed the required curriculum for the advanced ACPFIM certification.

The Chief Assistant Treasurer/Tax Collector is a Certified Public Accountant with 17 years of public service with the County of Orange. The Chief Assistant Treasurer earned a degree in Business Administration with an option in accounting from California State Long Beach and attained the following industry certifications:

- Certified Treasury Professional (CTP)

This certification recognizes a professional with a background in finance. The holder of this certification is disciplined in the following:

- Revenue collection and obligation payments
- Cash processing, reconciliation and analyzing financial statements
- Forecasting and monitoring cash flow requirements

- Certified Public Funds Investment Manager (CPFIM)

The CPFIM manager program is nationally recognized and offered by the Association of Public Treasurers of the United States and Canada. This certification recognizes the designees experience in investment policies, internal control, identifying and mitigating risk, investment options and characteristics.

- Certified Fixed Income Practitioner (CFIP)

The holder of this certification has demonstrated their commitment to financial literacy, transparency and excellence in fixed income investing. This designation is designed for public agencies, institutional bond investors and fiduciaries. As with all

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certifications, the CFIP has continuing education requirements in order to maintain its use and promotion by the designee.

The Assistant Treasurer/Tax Collector has earned an MBA and a degree in Business Economics from USC-Marshall School of Business and has served the County of Orange for 6 years. The Assistant Treasurer holds the following certification:

- CHARTERED FINANCIAL ANALYST (CFA)

The CFA charter holder is required to pass exams covering areas of accounting, economics, ethics, money management and security analysis. The CFA certification is considered the gold standard in the field of investment analysis. An advance degree (MBA) is a prerequisite for achieving this certification. The CFA is a specialized credential that is structured for candidates working in the areas of investment management and as an analysis/portfolio manager.

The Assistant Treasurer/Tax Collector Investments has a Bachelor of Arts degree in Business Economics from Chapman University. The portfolio manager is responsible for staying current with market trends, and assisting the staff members with strategic decisions.

2011- 2012 TREASURER AND STAFF ACCOMPLISHMENTS

The Grand Jury reviewed the following published summary of accomplishments related to this review of the Orange County Treasurer.

- *Held user conferences to streamline procedures*
- *Revamped investment credit process to focus on safety*
- *Increased use of cost effective payment options*
- *Held cash handling class for pool participants*
- *Reduced fees by implementing a temporary transfer program*
- *Implemented a "Follow the Money" training program*
- *Reduced expenses by \$2.3 million*
- *Reduced credit card fees and charge on property tax payments*

In addition to the above, the Treasurer has published a complete list of accomplishments at www.ttc.ocgov.com.

INVESTMENT GUIDANCE AND SUPPORT SYSTEMS

The Grand Jury is aware that all investments involve some form of risk, and that efficient financial management combines safety of principal alongside opportunities for growth. Equally important is that a diversified investment portfolio is designed to neutralize economic volatility and provide for steady returns amidst numerous economic scenarios, and yet still carry distinct risks. Diversification strategies are dynamic, and vary according to risk tolerance and particular goals and requirements. For example, liquidity requirements must ensure that pooled participants have sufficient funds available to meet required expenses.

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As mandated by the Orange County Treasurer Investment Policy Statement, the Treasurer has the authority under California Government Code Section 53600, to invest in specific types of securities.

The Treasurer may execute an authorized investment transaction with or through broker/dealers, banks or counterparties. The broker-dealer partnership provides the Treasurer and staff support with specific categories of investments. Investments may not be made for speculation, but for considering first the safety and liquidity of capital and finally yield. Investments are made with the same judgment, care, prudence, discretion, and intelligence that a person would use managing their own financial affairs.

The Treasurer annually reviews the financial conditions, services provided, and registration status of current broker-dealers authorized to provide financial services to the County. Financial Institutions and broker-dealers who desire to become qualified for investment transactions within the County must provide the following for consideration:

- * *Broker Dealer Questionnaire*
- * *The Firms' Audited Annual Report*
- * *Broker-Dealer Status Reports*
- * *Wiring and Delivery Instructions*
- * *Municipal Securities Rulemaking Board G-37 filing for the past two years*

THE BLOOMBERG INVESTMENT SYSTEMS AND GUIDANCE

The Grand Jury understands that prudent financial decisions depend on a sound financial platform and resources. It is not enough to know how to determine success or make prudent investment selections without an infrastructure of checks and balances.

The Bloomberg investment platform utilized by the Treasurer provides guidance and measures a portfolio's performance and compliance on a daily basis. Bloomberg is globally recognized and has more than 300,000 subscribers. The Bloomberg membership provides 24-hour access seven days a week, and is a reliable and consistent resource used by the Treasurer and staff. The Treasurer also has access for support in the areas of market surveillance, fundamental analysis valuation, statistical analysis, and portfolio and risk analytics. The Treasurer is one of only a few California county Treasurers using the Bloomberg support system to manage and evaluate pooled funds on a daily basis.

INVESTMENT POOL RATINGS

Standard and Poor's rates the Orange County Money Market Fund and the Educational Money Market Fund on a regular basis. The rating service assigned its highest rating of AAA for the two Investment Pooled Portfolios. The rating is determined by the fund's high credit quality, low market price exposure, and prudent asset management. This rating reflects the fund's extremely strong capacity to maintain principal stability and to limit exposure to principal losses due to credit, market, and/or liquidity risks.

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Standard and Poor's reviews pertinent information weekly as a part of the rating process. The Treasurer's investment staff is responsible for the pool's day-to-day management. The Treasurer's staff also includes an Investment Credit Analyst who focuses entirely on credit and provides the investment team with ongoing updates. The Chief Assistant Treasurer/Tax Collector is responsible for establishing and maintaining an internal control structure and is responsible for monitoring the portfolio daily.²

CREDIT QUALITY FOR APPROVED INVESTMENTS

One of the principal criteria for judging the investment quality of a portfolio is the credit quality rating. Credit quality informs the Treasurer of the investments' credit worthiness or risk default. The credit quality is determined by a private rating agency such as Standard & Poor's, Moody's or Fitch. The credit quality designations range from a high (AAA to AA), to a medium (A to BBB), and a low (BB,B,CCC,CC,C) The following is an analysis from the credit quality report for the Orange County Investment Pools dated January 31, 2013.

² Standard and Poor's

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Analysis By Fund				
	County Money Market Fund	Educational Money Market Fund	Extended Fund	John Wayne Airport
AAA Total	8.47%	6.80%	N/A	2.42%
AA Total	9.19%	6.50%	1.56%	12.70%
A Total	3.41%	2.43%	7.71%	4.63%
A-1 Total	0.69%	0.82%	N/A	N/A
US GOV	78.24%	83.45%	90.73%	80.25%
Total	100.00%	100.00%	100.00%	100.00%

Analysis By Pool		
	Orange County Investment Pool	Orange County Educational Investment Pool
AAA Total	3.94%	3.91%
AA Total	5.11%	4.40%
A Total	5.71%	4.67%
A-1 Total	0.32%	0.47%
US GOV	84.92%	86.55%
Total	100.00%	100.00%

AA Includes AA+, AA- and AA
 A Includes A+, A- and A
 A-1 Includes A-1+, F1+, A-2 and F2
 US GOV Includes Agency & Treasury Debt

THE INFLOW OF CASH FOR INVESTMENT POOLS

The inflow of cash rarely matches the timing of expenditures. For example, property tax revenues are generally derived from semi-annual installments, while local agency obligations and spending commitments occur more frequently throughout the year. The Treasurer may also receive lump sum proceeds from the sale of bonds issued to pay for capital improvements. Under most conditions, bond proceeds are not spent immediately. Without the ability to invest cash balances, pending the need to make expenditures, the Treasurer might accumulate large amounts of liquid cash.

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The following chart (Column #4 Cumulative Available Cash) for January 2013- July 2013 illustrates the importance of investing pooled funds. The projected cumulative available cash column represents how much cash would be idle if not invested, resulting in a loss of yield (income) to the portfolio. By investing cumulative cash balances, the invested balance generates a return until the funds are required for expenditures.

ORANGE COUNTY INVESTMENT POOL				
Month	Investment Maturities	Projected Deposits	Projected Disbursements	Cumulative Available Cash
January 2013 - Ending Cash				\$ 11,280,252
February	\$ 385,507,644	\$ 390,573,820	\$ 344,984,875	442,376,841
March	747,982,780	832,870,332	510,353,155	1,512,876,797
April	304,590,486	1,607,830,826	1,565,565,138	1,859,732,972
May	143,732,843	267,558,142	599,186,257	1,671,837,700
June	166,982,268	298,503,631	465,943,415	1,671,380,184
July	160,643,853	365,452,383	564,808,444	1,632,667,976

ORANGE COUNTY EDUCATIONAL INVESTMENT POOL				
Month	Investment Maturities	Projected Deposits	Projected Disbursements	Cumulative Available Cash
January 2013 - Ending Cash				\$ 4,064,583
February	\$ 539,412,657	\$ 163,478,039	\$ 500,254,576	206,700,704
March	424,952,588	303,852,913	516,166,999	419,339,206
April	278,876,046	941,804,226	606,770,940	1,033,248,539
May	93,636,426	189,231,045	509,189,323	806,926,688
June	54,778,238	227,241,615	496,117,424	592,829,116
July	61,476,844	649,573,413	424,925,367	878,954,006

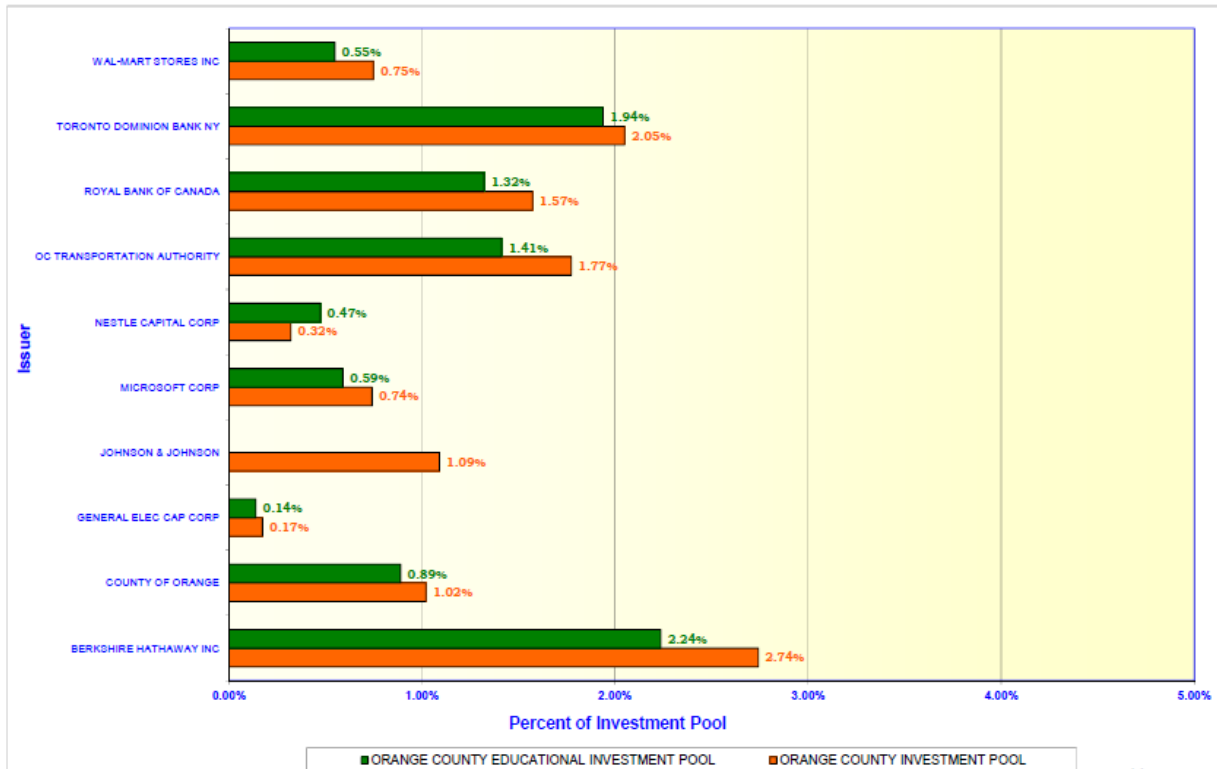
ISSUER CONCENTRATION

The County Treasurer will diversify the investment portfolio to minimize the risk of loss resulting from an over concentration of assets. Over concentration of assets results from investing a large portion of assets into one security, one sector, industry, or maturity duration. Over concentration of assets is not suitable for most investment portfolios and undermines the principles of prudent asset management. Under the Investment Policy Statement the Treasurer is generally not authorized to invest more than five percent with any approved issuer.

Diversification of investments cannot, by itself, guarantee a profit or protect against loss, it can reduce the effects of volatility within the portfolio and mitigate the issue of over concentration. The Grand Jury reviewed the following published issuer concentration dated January 31, 2013.

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ORANGE COUNTY TREASURER - TAX COLLECTOR ISSUER CONCENTRATION-By Investment Pool January 31, 2013



AUTHORIZED INVESTMENTS AND MATURITY RESTRICTIONS

In addition to the concentration requirements, the Grand Jury also recognizes that maturity durations are an important indicator of a portfolio’s ability to maintain a stable net-asset-value (NAV), and that shorter maturities generally sacrifice yield to obtain greater liquidity and stability. It is also clear that having a long position related to maturity duration is not ideal with a low interest rate environment, and interest rate increases cause bond prices to decline. Treasury Bills and bonds move in the opposite direction of interest rates, which may reduce the value of treasuries and bonds.

With interest rates in 2013 at an historic low, keeping allocations in proper balance becomes a greater challenge. The Grand Jury understands the compromises associated with liquidity and yield, and that market conditions and cash flow requirements are vital when determining the term of an investment maturity. Each of the investments described below carry varying degrees of risk.

Under the Government Code Section 53601-53635, securities may not be held for a period exceeding five years. The Code also regulates the risk level of the portfolio. To mitigate risk, the securities in the extended fund generally must be listed between the top two categories of a national rating agency. The Grand Jury reviewed the following

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Treasurer's Investment Report dated January 31, 2013, outlining the current authorized investment composition and compliance restrictions.

Authorized Investments and Maturities

Type of Investments	Cal Gov. Code ³ (% of Funds Permitted)	Orange County IPS	Cal Gov. Code ⁴ (Maximum Final Maturity)	Orange County IPS Maximum Final Maturity	
				Long-Term Extended Fund	Short-Term Money Market Fund
U.S. Treasury Securities	100%	100%	5 years	5 years	397 days
U.S. Gov. Agency Securities	100%	100% Total	5 years	5 years	397 days
		> 30% in one issuer			
Municipal Debt	100%	30% Total	5 years	5 years	397 days
		> 5% in one issuer except 10%-County of Orange			
Medium-Term Notes	30%	30% Total	5 years	5 years	397 days
		> 5% in one issuer			
Bankers Acceptance	40%	40% Total	180 days	180 days	180 days
	30% of a single issuer	> 5% in one issuer			
Commercial Paper	40%	40% Total	270 days	270 days	270 days
	10% of a single issuer	> 5% in one issuer			
Negotiable Certificates of Deposits	30%	30% Total	5 years	5 years	397 days
		> 5% in one issuer			
Repurchase Agreements	100%	20% Total	1 year	1 year	1 year
		> 10% in one issuer			
Investment Pools/Mutual Funds	20%	20% Total	N/A	N/A	N/A
	10% of a single issuer	> 10% in one issuer			

DESCRIPTION OF AUTHORIZED INVESTMENTS

United States Treasury Securities

The United States government is the world's largest issuer of debt, making Treasury Securities the primary instrument in the fixed income market. Treasuries are guaranteed by the full faith and credit of the U.S. Government. The California Code prohibits a Local County Treasurer from investing in Treasuries with a maturity of more than five years. Maturity levels can be extended with the approval of the Orange County Board of Supervisors. There are no concentration limits or minimum rating restrictions for this equity.

³ Source: California State Code Sections 53601-53635

⁴ Source: California State Code Sections 27000.1, 53607, and 53608

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United States Government Agency Securities

Federal agency securities are issued by government sponsored entities. The Federal Farm Credit Bank and the Federal Home Loan Bank are examples of federal agencies. Unlike Treasuries, most Government Agency securities are not guaranteed, but are considered a moral obligation of the United States Government.

The exceptions are the Federal National Mortgage Association and the Federal Home Loan Mortgages Corporation which are under conservatorship and currently guaranteed by the Federal Government.

Commercial Paper

Commercial paper is a short-term unsecured promissory note issued for a specified maturity and is a financing process primarily used by corporations. Public entities may purchase commercial paper only from corporations that are organized and operating in the United States. As outlined in the Treasurers 2013 Investment Report the following are approved issuers for commercial paper:

- * Wal-Mart Stores
- * Net Jets Inc.
- * Chevron Corp.
- * Johnson & Johnson
- * Microsoft Corp
- * Nestle Capital Corp
- * Automatic Data Processing
- * Berkshire Hathaway Incorporated
- * Berkshire Hathaway Finance

Repurchase Agreements

Repurchase agreements are utilized as a cash management tool within the confines of the County banking system. Securities, as they relate to a repurchase agreement, mean securities from the same issuer, description, issue date and maturity. Repurchase agreements are collateralized by authorized securities and must comply with delivery requirements and maturity provisions.

Bankers Acceptance

Also known as time drafts, these are drawn and guaranteed by a commercial bank. (Purchase of banker's acceptance shall not exceed a maturity of 180 days and limited to 40 percent of the fund's portfolio).

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Money Market Mutual Funds And Issuers

Mutual Fund shares are issued by diversified management companies that are mutual fund registered with the Securities and Exchange Commission. This fund only invests in direct obligations in United States Treasury bills, notes and bonds, United States Government Agencies, and repurchase agreements with a weighted average of 60 days or less. Money Market Funds are limited to 20 percent of the portfolio with a 10 percent limit in a single Money Market Fund. The following are approved issuers in this category of investments:

- * *Invesco Government & Agency*
- * *Goldman Sachs Financial Square Government Fund*
- * *Morgan Stanley Liquidity Government Fund*
- * *Northern Institutional Treasury Portfolio*

Municipal Debt

Municipal bonds are debt securities issued by municipal government agencies. Issuers of municipal bonds include cities, counties, school districts, publicly owned airports and any other government entity or group below the state level. Municipal bonds are guaranteed by a local government or a group of local governments and are assessed for risk. Municipal Bonds Issued for certain purposes may not be tax exempt.

Medium Term Notes

Medium term notes are debt instruments that are issued through financial institutions or government obligations. Medium term bonds are offered through agents or dealers on a best effort basis, rather than a firm's commitment (underwriting) basis. For the benefit of diversification, medium term notes provide a broad range of investment across industry sectors and are as liquid as the traditional bond market.

INELIGIBLE INVESTMENTS

- * Principal or interest only strips (securities with cash flows based entirely on the monthly interest payment received from mortgage pools)
- * Securities that result in zero interest accrual if held to maturity
- * Common stock
- * Financial futures and options (the agreement to buy or sell at a certain date or price)
- * Structured Investment Vehicles

ECONOMIES OF SCALE AND THE POTENTIAL FOR GROWTH

The wealth of staff education, experience and success in managing investment pools, affords the Treasurer the opportunity to extend its best practices to non-participating entities. The benefits of becoming a member participant in the County Investment Pool are ease of administration, access to otherwise unavailable investment for small investors, diversification, liquidity and a highly educated experienced staff.

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Economies of scale, also called increasing returns to scale, is a term used by economists to refer to situations in which the cost of producing an additional unit of service output (marginal cost) decreases as the volume of output (services) increases.

A simple meaning of economies of scale is achieving more efficiently as the size of operation increases. Costs may decrease as the volume of output increases for a number of reasons. An advantage for the County is that a greater number of pooled participants allow fixed costs to spread over a larger base. Fixed costs are those that do not change regardless of the number of pooled agencies participating.

INFORMATION SYSTEMS

For security reasons, the Grand Jury will not provide specifics regarding the Treasurer's information systems. The data stored in the current system is highly sensitive, confidential and includes a significant amount of proprietary financial data.

The County Treasurer leverages several information system solutions to support the billing, collection and investment of County tax revenues. The majority of the information systems are older legacy systems. These systems have limited flexibility and are expensive and difficult to change and enhance. The one exception is the information system used by the Investment and Treasury Divisions.

The Investment Division utilizes Bloomberg and Sun Guard Quantum information systems software to execute and monitor investment strategies. Bloomberg software is recognized as one of the premiere portfolio management platforms in the industry and the level of data security, and flexibility inherent in this web-based tool is unequalled.

FINDINGS

In accordance with California Penal Code Sections §933 and §933.05, the 2012 - 2013 Grand Jury requests responses from each agency affected by the recommendations presented in this section. The responses are submitted to the Presiding Judge of the Superior Court.

Based on this study of the Orange County Treasurer/Tax Collector, the 2012-2013 Orange County Grand Jury has arrived at the following four findings:

- F1 The Treasurer does not have a securities representative (staff member). The Treasurer shall consider the benefits of having a member of the investment team equity licensed.
- F2 Having a licensed securities representative on staff could be a conflict of interest.

An Investment And Compliance Review Of The Orange County Treasurer

- F3 The Treasurer leverages several information systems for tax collection and investments. The majority are older legacy systems. These systems have limited flexibility and are expensive to change and enhance.

RECOMMENDATIONS

Based on this study of the Orange County Treasurer, the 2012-2013 Orange County Grand Jury has arrived at the following four recommendations:

- R1 The Treasurer shall consider the benefits of having a current staff member licensed as a Securities representative. (series 7, 51 and 63)
- R2 The Treasurer shall address the conflict of interest issues with having a securities licensed staff member.
- R3 The Treasurer shall address the expense, time restraints and expectations related to improving the information systems.

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 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.

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- (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 or is not reasonable it is not warranted, 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 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.

Responses required:

Office of the Treasurer-Tax Collector County of Orange: F1, F2, F3,

Responses required:

Office of the Treasurer-Tax Collector County of Orange: R1, R2, R3.

Orange County Water Sustainability: Who Cares?



2012-2013

Orange County Water Sustainability: Who Cares?

SUMMARY

When you woke up this morning, used the bathroom, brushed your teeth and brewed your coffee or tea, did you have water? Yes? Think about how fortunate you are? Do you know where that water comes from and how far it must flow to be available to you? How would drought, earthquakes or terrorism impact the delivery of safe water for your use? And the cost – is it reasonable?

The Grand Jury studied the current water supply sources, quantities available and projections of future water needs, visited water storage facilities, dams, pumping stations and aqueducts, as well as examined budgets for maintenance of existing facilities and construction of new facilities.

There is no agency that is specifically responsible for water policy in Orange County; however, there are two agencies (the Municipal Water District of Orange County (MWDOC) and the Orange County Water District (OCWD)) that do work with all the water retailers in Orange County to ensure that all are heard before changes are made regarding imported water policy and the use and recharging¹ of groundwater.² This process appears to be working well as Orange County has been importing less water and groundwater is being efficiently recharged enabling water retailers to have more water available for their use. Water conservation has also played an important role in reducing the total amount of water used in Orange County.

REASON FOR STUDY

The Grand Jury is concerned that most Orange County residents are uninformed about where their water comes from and what needs to be done now to ensure that sufficient water is available in the future to avoid rationing and higher costs.

The Grand Jury initiated this study to inform the public about the sustainability of their water supply and what needs to be done in the future to keep the tap running. California Assembly Bill 685 (AB 685), as part of the State Water Code, mandates water for domestic purposes must be of the highest quality. Additionally, Section 106.3 of the State Water Code further proclaims that “every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.”

In addition to examining the sustainability and quality of water, the 2012 – 2013 Orange County Grand Jury also evaluated the efforts of two major water agencies in Orange County, MWDOC and OCWD. They provide and manage the water resources (imported and groundwater) for local water retailers. This study intends to provide an insight into these two major agencies.

¹ A process by which rainwater (precipitation) seeps into the groundwater system.

² The supply of fresh water found beneath the Earth’s surface (usually in aquifers), which is often used for supplying wells and springs.

Orange County Water Sustainability: Who Cares?

METHOD OF INVESTIGATION

The Grand Jury used the following resources for this report

Water Trips and Tours

- Inspection Trip of the State Water Project and the Sacramento-San Joaquin Delta (Oct. 26-27, 2012)
- Tour of Rancho Santa Margarita Water District including the Upper Chiquita Reservoir (Jan.4, 2013)
- Tour of MWDOC Pilot De Sal Project in Dana Point (Jan.16, 2013)
- Tour of Laguna Water District (Jan.16, 2013)
- Tour of OCWD Water Replenishment System (Jan. 29, 2013)
- Inspection Trip of the Colorado River Aqueduct³ (Feb.1-2, 2013)

Meetings and Conferences

- CalDesal, 1st Annual Desalination Conference (Oct.29, 2012)
- Public Affairs/Water Use Efficiency (WUE) Joint Workgroup (Nov.1, 2012)
- Meeting between MWDOC and the Orange County Grand Jury Members of the Environmental and Transportation Committee (Mar. 14, 2013)

Interviews

- Upper Management MWDOC (Oct. 26, 2012)
- Professor and Director of Civil and Environmental Engineering Urban Research Center, the Henry Samueli School of Engineering, University of California, Irvine (Dec. 6, 2012)
- Upper Management Rancho Santa Margarita Water District (Jan. 4, 2013)
- Principal Engineer MWDOC (Jan. 16, 2013)
- Upper Management Laguna Beach County Water District (Jan. 16, 2013)
- Communications Manager, Mesa Consolidated Water District (Jan. 23, 2013)
- Member, Board of Directors Metropolitan Water District of Southern California (MWD) (Feb.1, 2013)
- Various Directors who also represent MWDOC on MWD Board of Directors, Upper Management of MWDOC (Mar.14, 2013)

Research

- Water facts and statistics supplied by MWDOC about Member Agencies including the following: water rates, financials, sources of revenue, Orange

³ An Aqueduct is a canal used to carry water from a great distance.

Orange County Water Sustainability: Who Cares?

County water sources in 2035, today's sources of water per each member water district, use of tiered rates in Orange County, water consumption and population, water storage update, South Orange County Water Reliability Study Update, and South Orange Coastal Ocean Desalination Project Status Update Jan., 2013

- 2010 Urban Water Management Plan, June 2011
- System and Supply Reliability, Rancho Santa Margarita Water District
- Cadiz, Inc.com/water-project
- San Bernardino County, Sentinel, "Opposition Forms Against Sending Desert Water to Orange County"
- Orange County Water Summit Congressman, Tom McClintock, representing the 4th District, May 20, 2011
- Sierra Club of Los Angeles Chapter Water Committee, July 2011
- Lecture on the Looming Global Crisis: Water Scarcity (Sept. 29, 2012)
- Various Web Sites of Orange County Water Districts
- Orange County Coastkeeper,⁴ "Huntington Beach Desalination"
- Poseidon Resources
- "Two More Favorable Decisions Move Poseidon's Desalination Project Forward"
- "The Role of Desalination in Meeting California's Water Needs", Jerry Johns, Deputy Director, California Department of Water Resources, Jun. 15, 2006
- Kahrl, William, Floods, Droughts and Lawsuits; A brief History of California Water Policy, Water, and Power
- California State Water Project Contractors' website
- History of the California water Project website
- Various Water Articles," LA Times"
- Various Water Articles, "Orange County Register"
- 2010-2011 Engineer's Report on the Groundwater Conditions, Water Supply and Utilization in the Orange County Water District, February 2012

2012 – 2013 Orange County Grand Jury Questionnaire to OC Board of Supervisors

- Questionnaire response received from all supervisors

ACRONYMS

AF – Acre Foot
BDCP – Bay Delta Conservation Plan
CVP – Central Valley Project
GWRS – Ground Water Replenishment System
IRWD – Irvine Ranch Water District

⁴ A local environmental group

Orange County Water Sustainability: Who Cares?

MWD (MET) – Metropolitan Water District of Southern California
MWDOC – Municipal Water District of Orange County
O&M – Operation and Maintenance
OCWD – Orange County Water District
OCSD – Orange County Sanitation District
RA – Replenishment Assessment
RTS – Readiness-to-Serve
SMWD – Santa Margarita Water District
SOCOD – South Orange County Ocean Desalination Project
SWP – State Water Project
WUE – Water Use Efficiency

BACKGROUND AND FACTS

A review of the history of water in California is provided in this section for the reader to better understand the various agencies involved, how these agencies came about, and the laws by which they must abide. In dealing with Orange County water policy, there are three major agencies: MWD, MWDOC, and OCWD.

MWD imports water into Southern California. MWDOC is the wholesaler that provides imported water to the water retailers (water districts and most municipal water departments). OCWD is responsible for groundwater within Orange County.

History of Water in California

California has a very complex and diverse range of climates. Variations in rainfall are large as annual totals range from less than 25 percent to more than 200 percent of average. Consequently, water has always been a major topic of concern and debate in not only the State of California but in Orange County as well.

The Spanish settled Alta⁵ California in 1769. They divided the lands into missions, pueblos, and ranchos and established the first system of water rights. Following the U.S.-Mexican War in 1848, the Treaty of Guadalupe Hidalgo recognized all property rights established under Spanish and Mexican law. Spanish law did not give water rights to the more than 800 ranchos created before the United States acquisition of California. The ranchos or the pueblos did not significantly change California's native waterscape.⁶

What did change California's native waterscape was the 1848 discovery of gold. With the discovery of gold, thousands of immigrants changed the state's nature and the way water resources were used. California's population grew from 10,000 non-natives to 100,000 non-natives in just one year. By 1900, California's population was more than 1.5 million.

⁵ Alta means upper

⁶ Source: Kahrl, William L.: *Floods, Droughts and Lawsuits: A Brief History of California Water Policy, Water and Power*, 1982.

Orange County Water Sustainability: Who Cares?

Growth in population was not the only factor that influenced how water would be used, but as the easy gold was panned and mined out, the miners found that they had to move water from the rivers to the gold. These miners diverted water from streams in the gold country and then used pressurized water to blast away hillsides. This first large-scale effort to industrialize California's water resources had huge consequences on the economy, environment and laws that govern water.

In 1855, the California Supreme Court decided whether the miners' rule of "prior appropriation"⁷ or the common law doctrine of "riparian rights"⁸ should apply to water. They decided in *Irwin v. Phillips, et al* 5 Cal. 140 (1855) to adopt the rule of "prior appropriation" as the law of the state, and over time, this became the dominant form of water rights. In other words, the principle of "first-in-time, first-in-right" decided who would receive water.⁹

The first investigation of California's water resources began in 1873. President Ulysses S. Grant commissioned an investigation by Colonel B.S. Alexander of the U.S. Army Corps of Engineers. He surveyed the Central Valley's irrigation needs and recommended development of the Sierra watersheds.

By the 1880's, the environmental and economic problems caused by gold mining were recognized. In *People v. Gold Run Ditch and Mining Company*, 66 Cal. 151 (1881), hydraulic mining was prevented in the watershed of the North Fork of the American River. At the same time, tension grew between riparian water users and appropriation water users. In 1886, *Lux v. Haggin*, 89 Cal.255 (1886) (one of the great legal cases in California history) decided that appropriative rights would continue to exist but would be inferior in priority to the rights of the riparians. This decision also held that disputes between riparians would thereafter be decided on the basis of reasonable use. This became the cornerstone of California water law. In 1887, the legislature enacted the Wright Act, which authorized the formation of irrigation districts with the power to acquire water rights, to construct water projects, to sell bonds, and impose property assessments. By the early 20th century, irrigation districts were successfully established throughout the state.

As Central Valley agriculture continued to expand, farmers turned to aquifers¹⁰ as a source of water. Conflicts between surface and groundwater users followed. The California Supreme Court handed down an opinion in *Katz v. Walkinshaw*, 141 Cal. 116 (1903), which said that "absolute ownership" of groundwater was no longer compatible

⁷ The right of water is based on actual use and not ownership of the land.

⁸ A doctrine of State water law under which a land owner is entitled to use the water on or bordering his/her property, including the right to prevent diversion or misuse of upstream water. Riparian land is land that borders on surface water.

⁹ Source: Kahrl, William L. *Floods, droughts and lawsuits: A Brief History of California Water Policy, Water and Power*, 1982.

¹⁰ A natural underground layer of porous, water-bearing materials (sand, gravel, rock) usually capable of yielding a large amount or supply of water.

Orange County Water Sustainability: Who Cares?

with California's hydrologic and economic conditions. It also said that the overlying landowners would have first claim to the available groundwater.

By 1900, Los Angeles had exhausted its local sources of water. Mayor Eaton appointed William Mulholland to be the chief engineer of the new Los Angeles Department of Water and Power. By 1905, he had acquired almost all riparian land and water rights in the Owens Valley, including the Reclamation Service's planned reservoir site. On November 5, 1913, the first Owens River water was pumped into the San Fernando Valley. Twenty years later, the population of Los Angeles was 1.2 million and Los Angeles needed more water. The Metropolitan Water District of Southern California (MWD) was formed by the Act of California legislature in 1927 and incorporated December 6, 1928. Today, it is made up of 26 agencies serving the 19 million people of Los Angeles, Orange, San Diego, Riverside, and San Bernardino Counties.¹¹

By 1933, Los Angeles had acquired most of the remaining private land in the Owens Valley and began pumping groundwater. The Los Angeles voters approved a bond to extend the aqueduct into the Mono Basin. Over the next four decades, the City's diversion of water ultimately set the stage for the California Supreme Court's recognition of the public trust as a fundamental limit on the exercise of water rights.

Michael Maurice O'Shaughnessy was commissioned by the mayor of San Francisco to construct a dam and divert water high in the watershed at the mouth of the Hetch Hetchy Valley. However, Hetch Hetchy Valley was part of Yosemite National Park. After much contention, led by John Muir and the Sierra Club, San Francisco prevailed and the Raker Act (1913) was passed. This allowed San Francisco's use of Hetch Hetchy Valley as a reservoir. This act planted the seeds of the environmental movement that would play a major role in California water policy during the latter decades of the 20th century and the beginning of the 21st century. Today, surface water appropriations initiated after 1914 must be authorized by a water rights permit or license.

In 1926, *Heminghaus v. Southern California Edison* 200 Cal.81 (1926), the California Supreme Court held that downstream riparians were entitled to the unimpaired flow of the San Joaquin River. This decision resulted in the 1928 amendment of the California Constitution that changed California water law in four ways:

- It declared the doctrines of reasonable and beneficial use to be the foundation of all water rights in California.
- It stipulated that the requirement of reasonable use could be asserted in all water rights disputes.
- It invested all branches of government with significant authority to implement the mandates of reasonable and beneficial use.

¹¹ Inspection Trip Colorado River Aqueduct, Feb.1-2, 2013,booklet "About MWD"

Orange County Water Sustainability: Who Cares?

- It laid the legal foundation for the statewide water projects that were on the drawing boards.¹²

The Boulder Canyon Project

In 1928, Congress authorized the building of Boulder Dam, a 726-foot dam at Boulder Canyon. Later the dam's name was changed to Hoover Dam. The dam created a 28 million acre-foot (AF)¹³ reservoir (Lake Mead). The statute provided additional political support for construction of the Imperial Dam and All-American Canal, Parker Dam, and the Colorado River Aqueduct. Arizona opposed the construction of Parker Dam. It took 50 years and a decision by the United States Supreme Court in *Arizona v. California* (1963) for the Colorado River Basin Project Act of 1968 to be approved and completion of the Central Arizona Project in 1982 to bring Arizona into compliance. The water provided by the Boulder Canyon Project's All-American Canal sustained farms in the Imperial Valley. It also fueled the rapid growth of cities within the MWD during and after World War II.

The Central Valley Project (CVP)¹⁴

Robert Marshall, a retired U.S. Geological Survey hydrologist, presented a plan for a statewide scheme of reservoirs and aqueducts to bring water from the Sacramento River to the San Joaquin Valley and divert water from the Kern River to Southern California.¹⁵ The Marshall Plan became the basis for California's preliminary plan for water in 1924 and the first State Water Plan of 1930 under the direction of State Engineer, Edward Hyatt. In 1933, the legislature authorized the Central Valley Project (CVP). Today, the CVP manages roughly 7 million AF of water annually. It is the largest water purveyor in California and is probably the most controversial. However, the 7 million AF of water was not enough for municipal and industrial users whose demands for water exceeded those of their agricultural neighbors.

State Water Project (SWP)

California experienced a second economic "gold rush" after World War II ended in 1945. People flocked to California, attracted by climate, new jobs, businesses and housing developments. The increased population made it clear that local water supplies would not meet future needs. In 1945, the California legislature authorized an investigation of statewide water resources. The idea of a SWP began when the Legislature passed the State Water Resources Act. This act created the Water Resources Board. The board reported that 40% of harvestable water in California's rivers was allowed to flow unused to the Pacific Ocean. The board completed studies

¹² Source: Kahrl, William L.: *Floods, Droughts, and Lawsuits: A Brief History of California Water Policy, Water and Power*, 1982.

¹³ One acre-foot = 325,851 U.S. Gallons

¹⁴ Federally owned aqueduct carrying water from Northern California to regions in Los Angeles.

¹⁵ Source: Kahrl, William L.: *Floods, Droughts, and Lawsuits: A Brief History of California Water Policy, Water and Power*, 1982

Orange County Water Sustainability: Who Cares?

that culminated in the Feather River Project which was presented to the Legislature in 1951 by State Engineer, A.D. Edmonston. The water system that emerged would parallel the CVP. The capstone of this project was the 3.5 million AF Oroville Reservoir on the Feather River. Water was then pumped from the Southern Delta into the California Aqueduct.

The approval of the SWP did not come easily. There was much contention between the MWD and the San Francisco Bay area and Delta residents. Special committees met to draft a constitutional amendment that would satisfy everyone. Out of this emerged the Burns-Porter Act. Under this act the County of Origin and Watershed of Origin Acts were reaffirmed. For Southern California, it contained guarantees of water, including contracts for firm water supplies that future legislatures could not change. It also guaranteed funds to pay for the facilities to deliver water to Southern California and funds to construct only facilities specified in the act and no others. After the legislative passage of the Burns-Porter Act and the voters' approval of the bond issue, construction started on the Project. First water deliveries began in 1970.

Existing Sources of Water in Orange County

Cities in Orange County, like most other places, were originally settled near flowing water supplies. As the cities grew and their water needs increased, water wells allowed growth to other areas further from flowing water. Orange County today relies on **imported water** from Northern California and from the Colorado River Aqueduct and **groundwater** from local wells for the majority of its potable¹⁶ water.

The majority of **imported water** in Orange County is available from the MWD through MWDOC. The majority of Orange County **groundwater** is made available and managed by the OCWD, which is a member water district of MWDOC. See Figure 1 for a relationship among MWD, MWDOC, OCWD, and Orange County local water districts and cities for imported and groundwater distribution.

¹⁶ Water that is safe and satisfactory for drinking and cooking.

Orange County Water Sustainability: Who Cares?

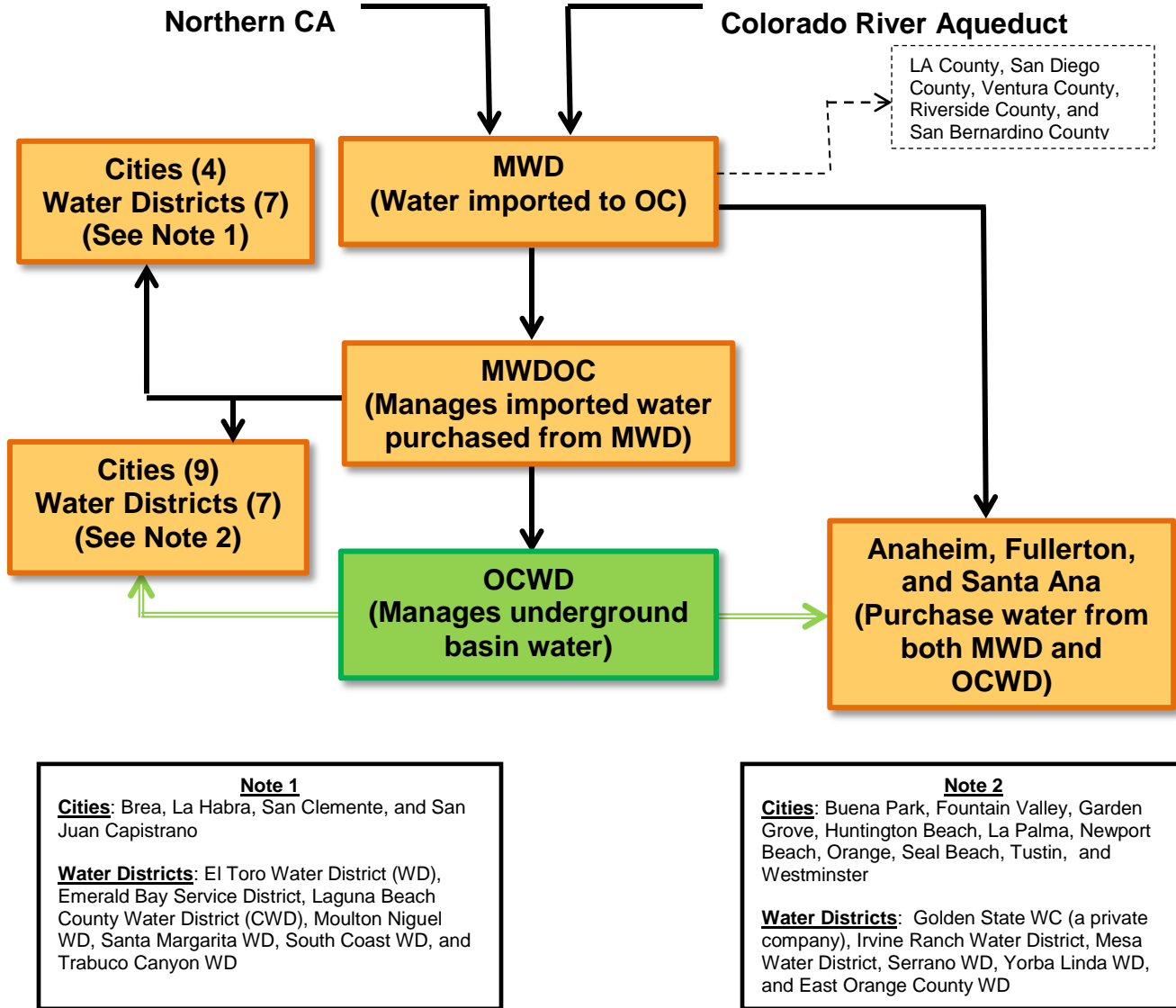


Figure 1 Relationship among MWD, MWDOC, OCWD, OC local water districts and cities

Metropolitan Water District of Southern California (MWD)

The MWD is a regional wholesaler that delivers water to 26 member public agencies serving 19 million people living in Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura counties. It is governed by a 37-member board of directors representing the 26 member agencies consisting of 14 cities, 11 municipal water districts and one county water authority, which collectively serve the residents and businesses of more than 300 cities and numerous unincorporated communities.

Orange County Water Sustainability: Who Cares?

The mission of MWD is to provide its 5,200-square-mile service area with adequate and reliable supplier of high-quality water to meet present and future needs in an environmentally and economically responsible way.¹⁷

To supply Southern California with reliable and safe water, MWD owns and operates an extensive range of capital facilities including the Colorado River Aqueduct, 16 hydroelectric facilities, nine reservoirs, nearly 1,000 miles of large-scale pipes and five water treatment plants. Four of these treatment plants are among the 10 largest plants in the world. In fact, MWD is the largest distributor of treated drinking water in the United States.¹⁸

As shown in Figure 1, the MWD imports water from the Colorado River Aqueduct and Northern California (via the State Water Project) to supplement local supplies, and helps its member agencies develop increased water conservation, recycling, storage and other local resource programs.

Municipal Water District of Orange County (MWDOC):

As stated previously, MWDOC was formed in 1951. It is a wholesale water supplier and resource planning agency that serves all of Orange County (except Anaheim, Fullerton, and Santa Ana) through 28 retail water agencies. Local water supplies meet nearly half of Orange County's total water demand. To meet the remaining demand, MWDOC purchases imported water – from Northern California and the Colorado River Aqueduct – through MWD and distributes it to MWDOC member agencies, which provide retail water services to the public. It plays a pivotal role by working with all of its member agencies to ensure adequate water is available for Orange County residents.

Figure 2 shows MWDOC's service area, which covers all of Orange County, with the exception of the cities of Anaheim, Fullerton, and Santa Ana.

¹⁷ Inspection trip of Colorado River Aqueduct, Feb. 1-2, 2013.

¹⁸ Inspection trip of Colorado River Aqueduct, Feb. 1-2, 2013.

Orange County Water Sustainability: Who Cares?

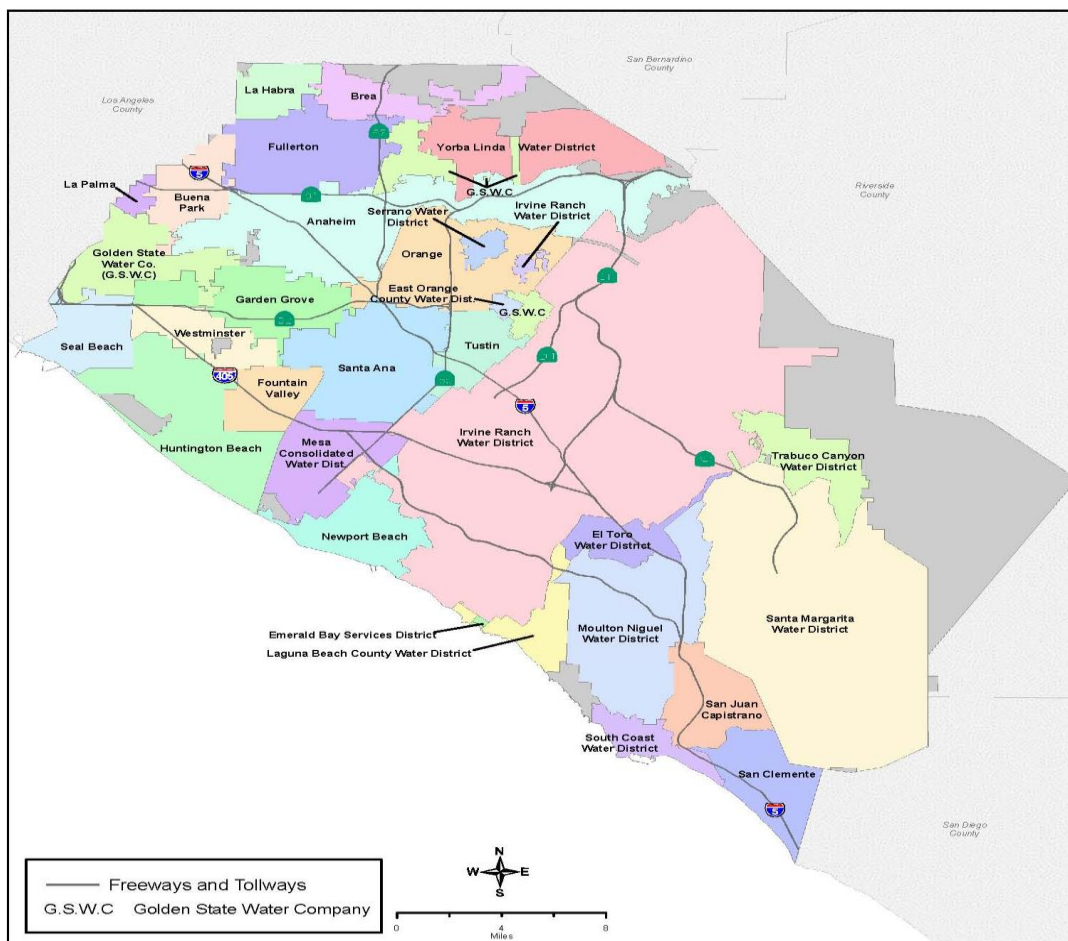


Figure 2 MWDOC Service Areas

Image Source: MWDOC Website

Orange County Water District (OCWD)

The Orange County Water District had its beginning in 1933. The newly formed Orange County Water District covered more than 163,000 acres and was authorized “to represent the water users and landowners of the Coastal Plain in all litigation involving outsiders.”¹⁹ In the previous decade, water levels had dropped. Artesian wells, once common in Tustin, Irvine and Fountain Valley, had gradually disappeared. The Santa Ana River was carrying less water into Orange County due to below-average rainfall and upstream storage and operations.

In the early years of the District, above-average rainfall (1937 to 1944) created bountiful run-off²⁰ for recharge²¹ of the groundwater. The District Act did not adjudicate

¹⁹ Source: Orange County’s Groundwater Authority: Orange County Water District, Historical Information.

²⁰ The part of precipitation, snowmelt, or irrigation water that runs off the land into streams or other surface water. It can carry pollutants from the air and land into the receiving waters.

²¹ Process by which rainwater (precipitation) seeps into the groundwater system.

Orange County Water Sustainability: Who Cares?

the groundwater basin,²² consequently, users could pump as much water as needed from the basin. Problems resulted because the users did pump as much water as they wanted. OCWD wanted to fulfill its mandate to protect the groundwater basin from depletion.

As OCWD entered its second decade, a drought that began in 1945 (relieved by only two wet years) lasted until 1969, bringing issues to the groundwater basin. Some wells along the coast began producing brackish water²³; groundwater levels dropped to 15 feet and ocean water moved into the aquifers. The District then turned to the MWD to supply water for basin replenishment. The cost of importing water for replenishment of the basin water proved to be so expensive that the District was not able to complete the mission. In 1954, OCWD implemented a Replenishment Assessment to generate revenues to allow the purchase of greater amounts of imported water. The cost to purchase the amount of imported water from MWD was finally apportioned to all pumpers in the District's service area. Now OCWD had the means to reverse the trend of groundwater depletion. Between 1956 and 1964, the replenishment program outpaced the rate of extraction by a wide enough margin to bring groundwater storage to 24 feet above sea level.

OCWD has grown more extensively and rapidly than anyone could have anticipated in 1933. Now the District covers well over 200,000 acres and serves a population of more than 2.4 million. Today, less than 4 percent of water is used for agricultural purposes. With new technologies and exciting research opening doors daily and with people more aware of conservation of water, perhaps, we can look to the future with confidence. See Figure 3 for OCWD service area.

²² A groundwater reservoir defined by the entire overlying land surface and the underlying aquifers that contain water stored in the reservoir. Boundaries of successively deeper aquifers may differ and make it difficult to define the limits of the basin.

²³ Mixed fresh and salt water

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Figure 3 OCWD Service Areas
Image Source: OCWD Website

For the percentages of imported and groundwater for retail suppliers' water in Orange County, see Table 1. (Note: Table 1 Information provided by MWDOC on 21 March 2013)

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Table 1
RETAIL SUPPLIERS' WATER SOURCES, FY 2011-12
Source of Water, %

Retail Water Supplier	Metropolitan Water [1]	Ground Water	Surface Water	Recycled / Non-Potable Water [2]	Total	Comments
1 Anaheim, City of	46%	54%			100%	
2 Brea, City of	33%	67%			100%	
3 Buena Park, City of	35%	65%			100%	Including C.U.P pumping
4 East Orange CWD Retail Z	38%	62%			100%	
5 El Toro WD	96%	N/A		4%	100%	
6 Emerald Bay Serv. Distr.	100%	0%			100%	
7 Fountain Valley, City of	47%	41%		12%	100%	
8 Fullerton, City of	37%	63%			100%	692.7 AF of "In-Lieu" including under MWD
9 Garden Grove, City of	32%	68%			100%	
10 Golden State WC *	37%	63%			100%	
11 Huntington Beach, City of	35%	65%			100%	
12 Irvine Ranch WD	21%	51%	4%	24%	100%	
13 La Habra, City of	21%	79%		0%	100%	
14 La Palma, City of	35%	65%			100%	
15 Laguna Beach CWD	100%	0%			100%	
16 Mesa WD	37%	58%		5%	100%	Colored water (redwood-tinted amber water) included with groundwater
17 Moulton Niguel WD	82%	N/A		18%	100%	
18 Newport Beach, City of	35%	65%		<1%	100%	
19 Orange, City of	50%	45%	5%	0%	100%	
20 San Clemente, City of	90%	2%		8%	100%	
21 San Juan Capistrano, City	46%	49%		5%	100%	
22 Santa Ana, City of	32%	68%		<1%	100%	
23 Santa Margarita WD	83%	0%		17%	100%	
24 Seal Beach, City of *	37%	63%			100%	
25 Serrano WD	N/A	59%	41%		100%	
26 South Coast WD	77%	13%		10%	100%	Includes the South Laguna service area.
27 Trabuco Canyon WD	60%	16%	2%	22%	100%	
28 Tustin, City of	37%	63%			100%	Metropolitan source includes the In-Lieu program, otherwise, it would be 22%
29 Westminster, City of	37%	63%			100%	
30 Yorba Linda WD	52%	48%			100%	

[1] Metropolitan Water District of Southern California (known as MWD) imports water to Southern California from the Colorado River Basin and from Northern California. Long-Term "In-Lieu" water deliveries that indirectly replenish aquifers are counted here as MWD water, and are not counted as Groundwater, unless indicated otherwise.

[2] Recycled municipal wastewater and/or Non-Potable surface or ground water.

C.U.P: In the Conjunctive Use Program, MWD stores water in the groundwater basin. The storage may be accomplished by "In-Lieu" deliveries.

n.r.: No response was received for this item.

* This agency did not respond with any data for this table. Previous year's information is shown.

Orange County Water Sustainability: Who Cares?

2012-13 Groundwater and Imported Water Production Costs for Non-Irrigation Use

The estimated cost for groundwater production for a large groundwater producing entity such as a city water department or a water district in OCWD service area is presented in Table 2.²⁴

Table 2 Estimated 2012-13 Water Production Costs

Non-Irrigation Use	Groundwater Cost (\$/AF)
Fixed Cost	
Capital Cost	56.00
Variable Cost	
Energy	64.00
Proposed Replenishment Assessment (RA)	266.00
Operation and Maintenance (O&M)	57.00
Total Cost to Producers	443.00

The total cost to produce an AF of groundwater in 2012-13 is estimated to be \$443. This is based on a survey conducted by OCWD in fall 2011 of nineteen large groundwater producers. The capital cost component (\$56 per AF) was derived using the available actual project cost data for eight production wells constructed in 2008 under the MWD Long-Term Groundwater Storage Program and adjusted using the Engineering News-Record Construction Cost Index. It is based on 2008 average cost for design and construction of a production well (excluding land cost) under the MWD Long-Term Groundwater Storage Program (cost amortized over 30 years at 5 percent interest). The energy cost (\$64 per AF) is based upon the quantity of groundwater pumped. The OCWD RA cost is the estimate of the proposed RA for 2012-13. O&M costs ranged from \$23 to \$259 per AF with a median cost of approximately \$57 per AF. Elements that influence these costs include load factors and variations in groundwater levels. Recent wells are generally deeper than those drilled decades ago. Based on the survey, the average load factor (which indicates the percent-of-use of an extraction facility) equaled 47 percent.

Imported water is supplied to OCWD's service area by MWD through MWDOC, which delivers both treated and untreated water. There are several categories of water available from MWD. The categories most applicable to this comparison are "full-service water and "In-Lieu water", and untreated water (referred to as "replenishment water"). Treated water is used directly by various groundwater producers for municipal and industrial purposes, while untreated water is used by OCWD for groundwater replenishment. Table 3 shows the estimated costs for MWD treated water category for 2012-13 water years.

²⁴ Source: 2010-2011 Engineer's Report on the Groundwater Conditions, Water Supply and Basin Utilization in the Orange County Water District.

Orange County Water Sustainability: Who Cares?

Table 3 Estimated 2012-13 Imported Water Costs (See Note 1)

Rate and Charge Components	Treated Water Rates (\$/AF)
Firm Deliveries	Full Service Water
MWD Supply Rate (MWDOC Merged Rate)	140.00
MWD System Access Rate	223.00
MWD System Power Rate	189.00
MWD Water Stewardship Rate	41.00
MWD Treatment Surcharge	254.00
MWD Readiness-to-Serve and Capacity Charges (See Note 2)	80.00
MWDOC Surcharge	3.25
Total	930.25

Note 1: Rates are an average of calendar year 2012 and proposed calendar year 2013. Imported water costs for MWD's member agencies (i.e., Anaheim, Fullerton, and Santa Ana) are not reported here due to the variability among these agencies on water supply allocations between MWD's Tier 1 and Tier 2. (Information provided by OCWD on 25 April 2013)

Note 2: Readiness-to-serve and Capacity Charges have been converted to an approximate cost per AF, but are not normally reported in terms of unit cost.

Cost components for imported treated and untreated water are listed in Table 3. The System Access charge is for costs associated with the conveyance and distribution system, including capital and O&M costs. The Water Stewardship charge is used to support MWD's financial commitment to conservation, water recycling, groundwater recovery, and other water management programs approved by MWD. MWD uses the Capacity charge to recover its cost for use of peaking capacity within its distribution system. The Readiness-to-Serve (RTS) charge is to recover MWD's cost associated with providing standby and peak conveyance capacity and system emergency storage capacity. As of January 1, 2003, the RTS charge was discontinued for interruptible deliveries and the Capacity Charge commenced for full service and agricultural program deliveries. The Capacity Charge does not apply to replenishment water. The MWDOC surcharge applies to the MWD imported water purchased by local agencies and provides general funding for MWDOC. Anaheim, Fullerton, and Santa Ana are not charged MWDOC surcharge as these MWD member agencies purchase imported water directly from MWD.

Table 4 summarizes and presents a comparison between groundwater and imported water production costs for 2012-13 water year.

Table 4 Estimated 2012-13 Water Production Cost Comparison

Non-Irrigation Use	Groundwater Cost (\$/AF)	Imported Water Cost (\$/AF)
Fixed Cost	56.00 ¹	930.25 ³
Variable Cost	387.00 ²	0.00 ³
Total Cost to Producers	443.00	930.25

¹ Capital Cost

² Cost for energy, O&M, and RA

³ Delineation of fixed and variable costs not available

i

Imported Water

Orange County Water Sustainability: Who Cares?

Orange County is dependent on imported water for nearly half of its total water usage. It has two main sources of imported water. The first source the Grand Jury looked at was the State Water Project that included the California Aqueduct. This aqueduct starts on the Feather River by Stockton and brings water to Lakes Pyramid, Castaic, and finally to Lake Perris in Riverside County. The second source was the Colorado River Aqueduct which diverts water from the Colorado River at Parker Dam, Lake Havasu, to the east side of the Santa Ana Mountains.

State Water Project (SWP)

The SWP is a state water management project under the supervision of the California Department of Water Resources. It spans 700 miles thus making it the world's largest publicly built and operated water and power development system. It provides water to more than 23 million people and generates an average of 6.5 million megawatts of hydroelectricity annually. It includes pumping and power plants, reservoirs, lakes and storage tanks, aqueducts, tunnels and pipelines. These facilities capture, store and convey water to 29 water agencies. Most of the water (80%) carried by the project is used for agriculture.

The SWP includes the Oroville Dam, the San Luis Reservoir, and the California Aqueduct. (The aqueduct is 444-miles-long.) The water in the main stem of the California aqueduct travels south to the Edmonston Pumping Plant (the State Water Project's largest pumping plant). This pumping station lifts the water nearly 2,000 feet up and over the Tehachapi Mountains through 10 miles of tunnels. Once clearing the mountains, the aqueduct splits into East and West Branches. The West Branch travels southwest to feed Pyramid Lake and Castaic Lake in the Los Angeles Mountains. The East Branch (the main stem) continues southeast eventually filling Lake Perris (via the 28-mile-long Santa Ana Pipeline). This provides water to the MWD. On average the California Aqueduct brings a total of 6,023 AF daily to Southern California.

The Colorado River Aqueduct

The Colorado River Aqueduct is 242 miles long and delivers 53,000 acre-feet of water daily to Southern California. It was constructed between 1933 and 1941 by MWD to ensure a steady supply of drinking water to Los Angeles. It now serves Southern California communities from Ventura County to San Diego County.

The aqueduct begins at Parker Dam on the Colorado River, southeast of Lake Havasu City, Arizona. It crosses the Mojave Desert and enters the Coachella Valley north of the Salton Sea. It then flows northwest along the Little San Bernardino Mountains and crosses the San Jacinto Mountains west of Palm Springs. It finally terminates at Lake Mathews in Riverside County. Another part of the Colorado Aqueduct system was recently added. The Diamond Valley Dam and Lake is located just to the south of Hemet and was completed in 1999.

Orange County Water Sustainability: Who Cares?

Today, the aqueduct consists of four reservoirs, five pumping plants, 63 miles of canals, 92 miles of tunnels, and 87 miles of buried conduit and siphons. It is operated by MWD.

Groundwater

Groundwater is used for drinking and irrigating crops. It comes from rain, snow, sleet, and hail that soak into the ground. The water moves down into the ground because of gravity, passing between particles of soil, sand, gravel, or rock until it reaches a depth where the ground is filled, or saturated, with water. The area that is filled with water is called the saturated zone²⁵ and the top of this zone is called the water table. The water table may be very near the ground's surface or it may be hundreds of feet below depending on many factors. Heavy rains or melting snow may cause the water table to rise, or heavy pumping of groundwater supplies may cause the water table to fall. The water in lakes, rivers, or oceans is called surface water. Groundwater and surface water sometimes trade places. Groundwater can move through the ground and into a lake or stream. Water in a lake can soak down into the ground and become groundwater. Groundwater is stored in the ground in materials like gravel or sand. It can also move through rock formations like sandstone or through cracks in rocks. Wells pump groundwater from the aquifer and water retailers deliver the water. See Figure 4.

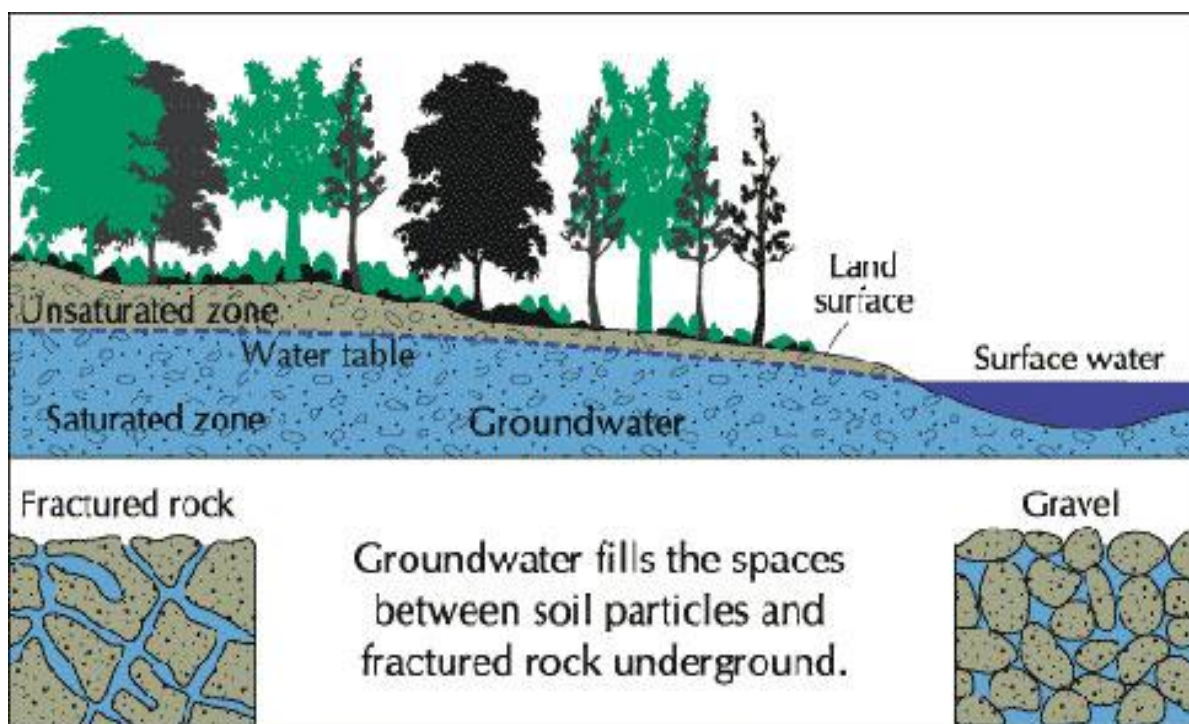


Image compliments of US Geological Survey, adapted by The Groundwater Foundation.

Figure 4 Groundwater Basic Concepts

²⁵ The area where water fills the aquifer is called the saturated zone (or saturation zone).

Orange County Water Sustainability: Who Cares?

Some communities rely on groundwater for most of its water needs. Replenishing the groundwater supply is an important part of managing this valuable natural resource because over time the water table or the depth at which groundwater can be found, may drop. The replenishment of groundwater (recharge) closes the gap between the supply of groundwater and the demand the community puts on it. There are two types of recharge: natural and artificial. *Natural recharge* occurs in streams, channels, and ponds. As water flows through streams and channels, or into ponds, water soaks into the soil and eventually makes its way to the groundwater table. Natural recharge is an important part of the hydrologic cycle. *Artificial recharge* is a man-made means of recharge. An example of artificial recharge is the use of “reclaimed municipal wastewater”²⁶ through infiltration basins²⁷ or direct injection²⁸. The biggest drawback of this artificial recharge is the health risk if there is insufficient treatment. Hence, it is essential that the water go through a certain number of pretreatment steps before the water can be introduced to the groundwater to prevent any contamination and be used for indirect potable reuse. It is noted that both these forms of recharge are not limited to reclaimed municipal wastewater.

In Orange County, the Groundwater Replenishment System (GWRS), a jointly funded project by the Orange County Water District (OCWD) and the Orange County Sanitation District (OCSD), is the world's largest wastewater purification system for indirect potable reuse. The GWRS takes highly treated wastewater from OCSD that would have previously been discharged into the Pacific Ocean and purifies it using a three-step advanced treatment process consisting of microfiltration²⁹, reverse osmosis³⁰ and ultraviolet light with hydrogen peroxide³¹. The process produces high-quality water that exceeds all state and federal drinking water standards. Operational since January 2008, this state-of-the-art water purification project can produce up to 70 million gallons (265,000 cubic meters) of high-quality water every day. This is enough water to meet the needs of nearly 600,000 residents in north and central Orange County, California. These two public agencies have worked together for more than 30 years. They are leading the way in water recycling and providing a locally-controlled, drought-proof and reliable supply of high-quality water in an environmentally sensitive and economical manner. The facility provides approximately 15% of this region's water supply. GWRS water is reliable, safe, and locally-controlled. It is also more cost-effective and energy efficient to produce GWRS water than it is to import water supplies from the Delta and Colorado River. Of considerable significance is the uninterrupted nature of the

²⁶ Reclaimed municipal wastewater is defined as any surface water that is not drinkable.

²⁷ An infiltration basin is where “recharge waters such as treated municipal wastewater percolates from spreading through the unsaturated groundwater zone”. Requires the least maintenance and is most efficient. It is used in huge open areas where animal life is not disturbed.

²⁸ Direct injection is where the treated water is put directly into the groundwater. Used where the topography of the land is not suitable for large infiltration basins.

²⁹ Water is pushed through hollow fibers that remove bacteria and protozoa. (Source: USA TODAY, March 3, 2011)

³⁰ Water is pushed through a semi-permeable membrane, removing salts and pharmaceuticals. (Source: USA TODAY, March 3, 2011)

³¹ As a precaution, water is exposed to high-intensity Ultra Violet (UV) light and hydrogen peroxide to destroy trace organics. (Source: USA TODAY, March 3, 2011)

Orange County Water Sustainability: Who Cares?

wastewater supply, providing a measure of protection from imported water supply variability and curtailments.

Water Conservation

The Grand Jury has found that for many years, Orange County water districts have promoted water conservation. If the state has several years of drought or other catastrophes which affect the conveyance of water, the water districts ask the public to conserve and use various, suggested methods to accomplish this. Some of their suggestions are as follows:

- Wash only full loads of laundry or dishes. (Saves up to 50 gallons per week)
- Fix household leaks promptly. (Saves up to 20 gallons per day)
- Take 5 minute showers. (Saves up to 8 gallons each time)
- Turn off the water when you brush your teeth. (Saves up to 2.5 gallons per minute)
- Water your lawn only 1-2 days a week. (Saves up to 840 gallons per week)
- Use a broom rather than a hose to clean your patio and driveway. (Saves up to 40 gallons per day)
- Water your plants in the early morning or at night to reduce evaporation and ineffective watering due to wind gusts.
- Cut back washing your car. Use efficient public car washes for less runoff.³²

The public, in general, is usually cooperative when water rationing is a voluntary suggestion. However, conservation may become mandatory in the future if imported supplies are interrupted for any length of time. The California Water Project has allowed the levees up north to deteriorate for over 30 years. The San Andreas Earthquake Fault can cause serious damage to this water project, as can other smaller earthquake faults throughout the state, and interrupt service to many areas north and south. Drought is a constant threat to California especially in the south. Consequently, wise use of water has been one of the mantras of Orange County water districts for many years. A memorandum of understanding was developed in 1991 by the California Urban Water Conservation Council for advancing efficient use of water. Fourteen recommendations for cost-effective best management practices were suggested for the future. They are as follows:

- Residential water surveys
- Residential plumbing retrofits
- System water audits, leak detection and repairs
- Metering commodity rates
- Large landscape conservation programs
- High-efficiency washing machine rebate programs

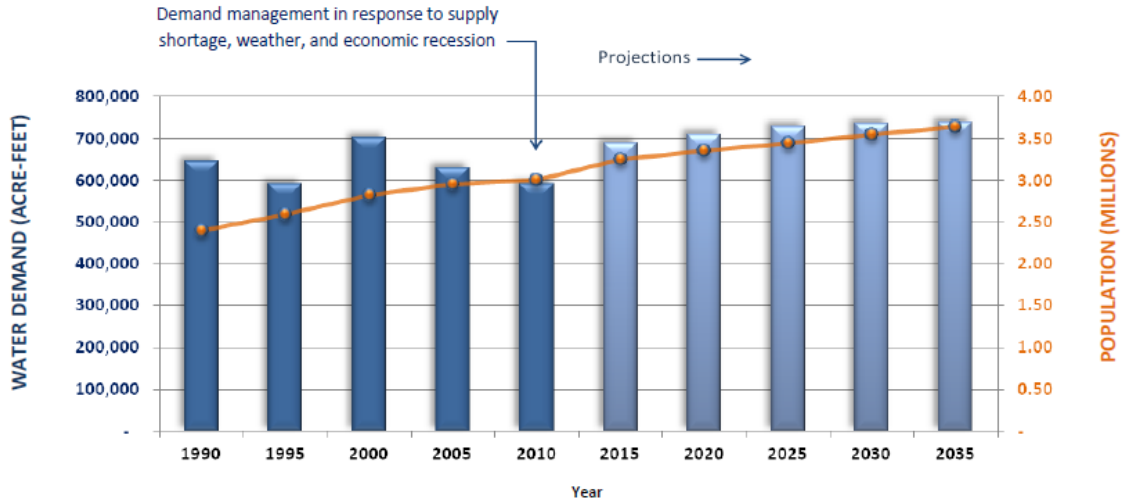
³² Bewaterwise.com, Metropolitan Water District of Southern California

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- Public information programs
- School education programs
- Commercial, institutional and industrial programs
- Wholesale agency assistance programs
- Conservation pricing, tiered pricing
- Conservation coordinator
- Water waste prohibition
- Residential ultra- low-flow toilet replacement programs³³

The public is familiar with these programs and that has decreased water usage in Orange County for many years. The use of water efficient appliances, plumbing fixtures, and shower heads are common to many households because they not only save water but save money. MWD and MWDOC have been in the forefront of promoting these conservation methods and programs with some member agencies following their lead in the 1990's and others joining in the twenty-first century. The MWDOC told the Grand Jury that despite the increase of population in Orange County and climate change throughout the county consumers are using less water and continue to do so. Urban conservation appears to be working. See Figure 5 for MWDOC water demand and population projection in Orange County information.

Water Demand and Population in Orange County



[1] Consumptive water demand projections include Agricultural, include recycled water, exclude water used for basin replenishment. Source: agency responses to MWDOC survey in Spring 2011.
 [2] Population numbers for 2005 and 2010 have been adjusted to reflect the findings of the 2010 Census. Population projections are per the Center for Demographic Research, CSU Fullerton based on OCP-2008 data set.

Figure 5 Water Demand and Population Projection

Image Source: Orange County Water Supplier Water Rates and Financial Information (updated March 2012)

³³ "Memorandum of Understanding Regarding Urban Water Conservation in California", California Urban water Conservation Council, 1991.

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Irvine Ranch Water District (IRWD), in particular, has followed the suggestions for conservation. They instituted tiered billing in 1991 and have given rebates to both commercial and residential customers who use water-saving devices and equipment. Innovation describes the pathway this water district follows to conserve.

Educational programs are another way to advance the mantra of conservation. Again, MWDOC has been the long-time leader in this area. Through the escapades of Ricki the Rambunctious Raindrop, school children receive the message of how to conserve water and share this information with their parents. It also distributes more than 15,000 copies of the Water Education School Calendar to Orange County Schools every year.³⁴ The calendars contain drawings on water conservation by elementary and secondary students. MWDOC also has a contract with the Discovery Science Center of Orange County for implementation of their School Education Program. The message is loud and clear: conservation is good for the environment and good for the community.

Conservation does not stop with residential programs. California is an agricultural state and farming uses large amounts of water. In 2009, after three years of drought, political gridlock in Sacramento and the worst economy the state has ever seen since the Great Depression the state legislature passed a comprehensive package of water legislation not seen since SWP was built mid-20th century. In 2010, the Department of Water Resources convened the Agricultural Stakeholders Committee, composed of agricultural water agencies, production agriculture, environmental and academic representatives. The Grand Jury recognizes that the days of major agriculture are at a minimum today in Orange County. However, Orange County imported water from SWP and the Colorado River Aqueduct would be affected by this legislation. Agricultural management plans are required by Senate Bill SBX7 7 which requires all agricultural water suppliers providing water to 25,000 acres or more (excluding acreage using recycled water) to measure the volume of delivered water to customers or be out of compliance. These documents must be updated every five years. If out of compliance, the agricultural water district is ineligible to receive state water grants or loans.³⁵

The Department of Water Resources intends to review and update statewide targets for regional water; whether urban or agricultural. Therefore, this legislation becomes relative to all counties including Orange County. Efficient water usage does not stop at county lines.

Recycling

According to the Association of California Water Agencies, water recycling, also known as reclamation or reuse is a reliable, economically feasible and environmentally sensitive means to maximize California's water resources and reduce the demand on freshwater systems. Orange County already uses reclaimed water for agricultural and landscape.

³⁴ Informational Pamphlet, Municipal Water District of Orange County.

³⁵ Ibid.

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Additional use of reclaimed water depends on public acceptance. Groups opposed to the use of reclaimed water have labeled it “toilet water” which has given its use a negative connotation. Some, reclaimed water is required to be filtered to a greater purity than our present tap water.

It may also be of interest to some that Las Vegas, Nevada, has been placing reclaimed water into the Colorado River for years in accordance with their local water recycling policy which allows them to withdraw an additional gallon beyond Nevada’s base allocation for every gallon of treated Colorado River water returned to the Colorado River.

An example of a successful recycling program is the one run by the Irvine Ranch Water District (IRWD). The main purpose of the water recycling program is to maximize drinking water supplies by reducing the need to use potable water for non-potable uses. IRWD pumps about 48 percent of its water from local groundwater wells and 27 percent of its water needs are fulfilled from surface water from the Colorado River and Northern California purchased from the Metropolitan Water District of Southern California. About 21 percent of their water needs are fulfilled by recycled water. The remaining 4 percent is supplied by other sources.

IRWD uses recycled water for landscape irrigation. Eighty percent of all business and public area landscaping in the district is irrigated with recycled water (also known as purple pipe water). IRWD was able to achieve these results because of good planning during development of the City of Irvine.

While it may not be possible for most water districts to achieve the same level of recycling success as IRWD, the use of recycled water could enable many districts to reduce their use of potable water for landscape watering.

Future Sources of Additional Water

Imported Water

SWP’s East Branch Extension (13-miles of buried pipeline, three pump stations, and a 90 AF regulatory reservoir) was completed in 2003. It is expected to meet the region’s water needs for the next 40 years. SWP water will be used to recharge over drafted groundwater basins and allow more flexibility for local water.

Bay Delta Conservation Plan

The Bay Delta Conservation Plan (BDCP) is a joint State and Federal project to restore the Sacramento/San Joaquin Delta ecosystem by constructing water supply infrastructure to deliver water to 25 million Californians, 3 million acres of farmland and businesses throughout the State. Currently, the cost for this project is estimated to be 14 billion initially.

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A major disaster could affect water service to Southern California for up to 3 years.³⁶ The new water system would include twin tunnels designed to meet environmental standards, withstand earthquakes and sea level challenges for the next 50 years.

Groundwater

The GWRS is currently undergoing a \$142.7 million expansion project, which broke ground in Jan. 2012. The project is scheduled for completion in Feb. 2015. Currently, water districts take 68 percent of their water needs from the basin's clear groundwater. However, that is expected to rise to 75 percent by 2015 as the OCWD expands its production of purified wastewater that is added to the drinking-water aquifer.

Recently, Orange County's Mesa Water District has built a facility that removes the organic materials, making the redwood-tinted amber water clear for local customers' consumption. It uses nano-filtration membranes to clear redwood-tinted amber water, which is an untapped resource of water in the aquifer, to provide 100 percent groundwater to customers, with a 100 percent reliable "backup" import supply. (In 2010, Mesa Water District reached an unusual agreement with the OCWD. In accordance with this agreement, Mesa District was permitted to draw as much water as they could pull from the redwood-tinted portion of the aquifer, about 600 to 1,000 feet down, an untapped resource for decades. This agreement is beneficial to other entities also who draw from the aquifer as pulling up the redwood-tinted amber water keeps it from spreading into the broader aquifer and becoming a treatment problem at nearby wells.)

Conservation

The Grand Jury has learned that Water Use Efficiency (WUE) is critical to the element of water supplies as fewer water sources will be developed. The most important aspect of this is educating the consumer about the value of water not the cost. The public seems to focus on cost. The main message to the consumer is, "Price is what you pay. Value is what you get."³⁷ Therefore, conservation must continue to be a source of additional water now and in the future.

The State Legislature passed Senate Bill SBX7 7 in November 2009. Senate Bill SBX7 7 requires the Department of Water Resources, along with other state agencies, to develop a single standardized water reporting form, used by urban and agriculture agencies alike. Water suppliers must increase water use efficiency and set targets to accomplish. This bill also mandates that water agencies must reduce per capita water use by 20 percent by 2020. Agricultural suppliers have until 2013 and urban water

³⁶ Inspection Trip of the State Water Project and the Sacramento-San Joaquin Delta, Oct. 2012.

³⁷ Municipal Water District of Orange County Public Affairs Workgroup and Water Use Efficiency Workgroup Joint Meeting, Nov.1, 2012.

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suppliers have until 2016 to meet these requirements. If these requirements are not met, water suppliers will not be eligible for state loans or grants.³⁸

Under this legislation, retail suppliers are able to form regional alliances to comply with the State mandate. The benefits of an alliance are that MWDOC does all the monitoring and reporting; the alliance helps with compliance. The agencies reap the benefits of water use efficiency, and there is no risk to the involved agencies. All this encourages further cooperation among the retail water agencies of Orange County.³⁹

Since the Grand Jury Report of 2007-2008, the water districts of Orange County have done much to teach the public to conserve water both inside the home and out. Some of the Water Use Efficiency (WUE) Programs include the following:

- Rotating Nozzles Rebate Program (continuing today)
- Turf Removal Program (continuing today)
- Synthetic Turf Rebate

Other WUE Programs that have been in effect throughout the 1990's and into the 21st century are as follows:

- High Efficiency Washer Program
- Smart Timer Program-Irrigation Timers
- Plumbing Fixture Rebate Program
- Landscape Certification
- Industrial Process Water Use Reduction Program
- High Efficiency Toilet Program
- Ultra-Low Flush-Toilet Program
- Home Water Surveys
- Showerhead Replacements

Some other possible new grant-funded WUE programs are as follows:

- Home Certification Program
- Public Spaces Program
- Spray to Drip Research Program
- Water Smart Industrial Program
- Weather-based irrigation controller
- Smart Timer Rebate Program⁴⁰

³⁸ MWDOC meeting with the Orange County Grand Jury Environmental and Transportation Committee (Mar. 14, 2013)

³⁹ MWDOC, Overview of Water Issues, p2, February 21, 2013

⁴⁰ Municipal Water District of Orange County, Public Affairs Workgroup and Water Use Efficiency Workgroup, Joint Meeting (November 1, 2012).

Orange County Water Sustainability: Who Cares?

The Orange County water retailers as a whole have established very informative web sites that share information about conservation methods inside and outside residential buildings. Open house dates at water facilities are posted on the web site so the customer has the opportunity to attend conservation workshops and receive water conserving devices such as water saving hose nozzles or drought-resistant plants. Water retailers provide to customers phone numbers for a water survey which aids in conservation on their property. Many of the Orange County water districts told the Grand Jury that water use efficiency has been accomplished in residential buildings.

One method of conservation that The Grand Jury 2007-2008 recommended in their report was to: "Develop a tiered-pricing structure with the first tier based on individual customers, water allocation priced at a commodity rate, and subsequent tiers priced significantly higher to encourage conservation. The pricing shall be structured in a manner that will preclude the necessity of price increases as a result of reduced water use."⁴¹

Since the 2007-2008 Grand Jury Report and before some water agencies instituted budget based tiered-rate some rate payers were provided a water budget for their property. This allows a reasonable amount of water usage inside and outside each month. If more water is used the customer is charged at a higher rate. This sends the message that using less water is an economically and environmentally sound practice. The less a rate payer wastes more water is available for everyone else. Unfortunately, many water districts have not decided to use tiered-rate pricing like other utilities such as electric and natural gas companies. Currently, the only water districts using tiered-rates are as follows:⁴²

- El Toro Water District
- Emerald Bay Service District
- Irvine Ranch Water District
- Laguna Beach County Water district
- Moulton Niguel Water District
- Trabuco Canyon Water District (seasonal rates⁴³)
- City of San Clemente (seasonal rates⁴⁴)

The municipal (city) water districts with tiered-billing are the following:

- City of Brea
- City of Buena Park
- City of La Palma (effective 2013)
- City of San Juan Capistrano

⁴¹ 2007-2008 Orange County Grand Jury Report, "Water Budgets, Not Water Rationing, Recommendation R-2b.

⁴² Memo, Budget Based Tiered Rates, Municipal Water District of Orange County, (November 7, 2012)

⁴³ Water is more expensive in the summer.

⁴⁴ Ibid

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In 2012 one water district told the Grand Jury that tiered-rates were data intensive and that smaller districts did not have enough customers to employ this method of billing. However, the Grand Jury noted that Laguna Beach County Water District uses tiered-rates, and they have a small customer base. Tiered-rates are one of the best practices in the search for new methods of conservation.

Much conservation of water has been accomplished in Orange County since the Grand Jury Report of 2007-2008. However, with the threat of climate change and periods of long drought, conservation of water continues to be an important method of water sustainability.

Recycling

In 2008, the 2007 – 2008 Orange County Grand Jury wrote a report on water that stated more than half of Orange County's water, 53 per cent, was imported by the MWD, which in turn sold it to the MWDOC and three cities.⁴⁵ Today, approximately 50 per cent of the water used throughout Orange County is imported.⁴⁶ This means efforts to conserve and recycle water are having an impact.

MWDOC's 2010 Regional Urban Water Management Plan of June 2011 provided many areas where recycled water could be used in the future. The Grand Jury is concerned that some water districts have not met prior estimates for recycling, and is therefore skeptical of the predictions contained in the report. However, MWDOC is encouraged to continue supporting the use of recycled water as a positive alternative for some present potable water uses.

Cadiz Water Project

Founded in 1983, Cadiz Inc. is a renewable resources company based in Los Angeles. This company began accruing land in the Cadiz Valley of eastern San Bernardino County. NASA funded a project in this area that integrated satellite imagery with geological, geophysical, and geochemical survey methods to help in the selection and evaluation of this land. Thus, the Cadiz Water Project was born. NASA found a reliable, natural underground aquifer system that could be used for recharging water and producing high quality drinking water for areas that needed it. A bonus was the large area of underground storage for surplus water.⁴⁷

In 1984, the first production wells were installed on the property to determine the viability of this system. These wells yielded a high-quality of groundwater and Cadiz Incorporated decided to purchase more of this land which doubled the size of the Cadiz property. Now this company owns 45,000 acres of which 34,000 acres are located in

⁴⁵ 2007 – 2008 Orange County Grand Jury, Water Budgets, Not Water Rationing

⁴⁶ <http://www.Metropolitan Water District.com/about/resources>

⁴⁷ Cadizinc.com/history

Orange County Water Sustainability: Who Cares?

the Cadiz Valley.⁴⁸ Since 1989, they have grown agricultural crops quite successfully there.

In 1998, Cadiz Inc. decided to establish a water supply and storage project on the site. Originally the design was to store surplus Colorado River water there. This water and groundwater would then be returned to the MWD as needed. The storage capacity is over one million acre feet.

By 2008 Cadiz Inc. began to design a project that would recover the water that was lost to evaporation and send it to customers in need of reliable supplies. They changed the pipeline route to avoid federal land. A 99-year lease was negotiated with Arizona and California Railroad Company to use a section of the railroad's right-of-way, and a pipeline was constructed to connect to the Colorado Aqueduct.

In 2012, Santa Margarita Water District (SMWD) became the lead agency promoting the project as a new source of drinking water for their customers. SMWD proceeded through the various environmental impact studies to respond to any complaints or problems before the project was approved. MWD ultimately rejected the original project. If this project had been approved, there would have been an average 50,000 AF (1.6 billion gallons) of water for participating water providers.⁴⁹ One million AF of underground storage would have been available to conserve or bank imported water; thereby, cutting the cost. If implemented, drought would not have continued to be a large problem because of the stored water space in this aquifer. The expected costs of delivered treated water from the Cadiz Project have been estimated to be \$1,100 to \$1,500 an AF. Unfortunately, past and present litigation against Cadiz has prevented the project from moving forward. Also MWD did not want Cadiz using the Colorado River Aqueduct for conveyance. Because of past litigation, the relationship between MWD and Cadiz has been tolerant at best.

Originally, Cadiz did an analysis of the water and found chromium. This however, was not chromium 6 which is a carcinogen. Treatment of this particular chromium is now considered a minor issue.

One of the loudest activists to decry the Cadiz Project is a former archeologist of the Bureau of Land Management assigned to the California Desert District.⁵⁰ This archeologist contends that this project will not help the desert residents, but take water from San Bernardino County to be used by Orange County. This individual also pointed out that hearings about this project are held in areas much too far from the desert area preventing citizens from attending. Rancho Santa Margarita is 217 miles from Cadiz and meetings on this project are held there on occasion.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ San Bernardino County Sentinel, "Opposition Forms Against Sending Desert Water to Orange County," Feb. 26, 2012.

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Federal opposition to this water project comes from a California senator. The Grand Jury noted that the senator has taken the position that Cadiz will never become a reality. In the eyes of the federal government, environmental concerns and finances seem to be the major reasons not to proceed with this project.

Ultimately, Cadiz remains a controversial issue as a future source of water. Regardless of differences; however, it is a future source of water that should not be ignored.

Desalination

The domestic use of seawater has been the dream of many coastal communities located in areas where potable water is not readily available. Until recently, that dream seemed unrealistic for the residents of Orange County; however, several Southern California projects may soon make that dream a reality. The two main stumbling blocks for most desalination projects are environmental and financial. The environmental concerns are the impact of seawater extraction and what to do with the salt that is produced. The financial concern has to do with the cost of the water produced because present desalination technology requires large amounts of electrical power to produce potable water. The three most publicized projects are in Carlsbad, Huntington Beach, and Dana Point.

Carlsbad Project

The Carlsbad project is a private development by Poseidon Resources Corp. The San Diego Water Authority approved a Water Purchase Agreement with Poseidon Resources Corp. in November 2012. The water authority states the plant will produce 50 million gallons a day starting in 2016. By 2020, it will generate enough water to meet 10 percent of the San Diego County's water needs.⁵¹ This will be the first large-scale desalination plant on the West Coast and the largest of its kind in the Western Hemisphere. Poseidon and the water authority are financing the \$954 million Carlsbad project with \$781 million in tax-exempt construction bonds. The balance is coming from investors who anticipate a return of about 13 per cent.

Poseidon chose the Carlsbad location, next to the Encina Power Station, so it could draw from the power plant's cooling water discharge – thus avoiding the environmental harm of operating its own ocean intake.⁵² While using the power plant's cooling water discharge appeared to be a good idea, it did not take into account the California Energy Commission's approval on May 31, 2012 to build a new natural gas power plant at that location which would entail destruction of the existing power station and removal of the water discharge system.⁵³ The price of the water produced will be a challenge because present figures suggest that water will cost about twice what water from other sources cost.

⁵¹ Los Angeles Times, February 18, 2013, Is desalt a drop in bucket?

⁵² Los Angeles Times, February 18, 2013, Is desalt a drop in bucket?

⁵³ California Energy Commission, News Release, May 31, 2012

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Huntington Beach Project

The Huntington Beach project is also a private development by Poseidon Resources Corp. It would consist of the construction and operation of a 50 million gallon per day seawater desalination facility within the City of Huntington Beach. The proposed desalination project would consist of a seawater intake system, pretreatment facilities, a seawater desalination facility utilizing reverse osmosis technology, post-treatment facilities, product water storage, chemical storage, electrical substation, on and off site pump stations, and 48 to 54 inch diameter product water transmission pipelines in Huntington Beach and Costa Mesa.⁵⁴

Like the Carlsbad project, this project would also use seawater from a neighboring power plant to eliminate the need for its own seawater intake system; however, a state policy adopted in 2010 will phase out the use of seawater to cool coastal power plants.⁵⁵ That policy could end seawater cooling at the Huntington Beach plant as early as 2020. That policy does not apply to stand-alone desalination plants.⁵⁶

The cost of the produced water is also a challenge to this project. Another challenge is the need to cross a neighboring city to deliver the water to potential customers in South County. Groups within Costa Mesa have raised concerns about the construction of a major pipeline through their city.

Dana Point Project

The official name of the Dana Point project is Doheny DeSal, and it is located in South Orange County. It is much smaller in scope than the two Poseidon projects discussed above. This project will not use an existing seawater intake to obtain the water required to supply the facility. It uses subsurface slant-well technology to tap beneath San Juan Creek and under the ocean floor to draw feed water.⁵⁷ Since the use of this technology will utilize a natural filtering process it should reduce costs by eliminating the need for costly pretreatment facilities and open-water intake systems.

This project is in pilot testing. Three phases of the pilot project have been completed. A final analysis of the results is required before future implementation can be evaluated. Cost may also be a major obstacle for implementation.

Is desalination in Orange County's future? The Grand Jury reviewed various documents and articles to evaluate desalination as a potential future water source. The final determination is that while it may present some challenges in the area of environmental concerns and the cost of water, it must be included in any discussion of future water sources for Orange County.

⁵⁴ <http://www.hungtingtonbeachca.gov/government/departments/major/poseidon.cfm>

⁵⁵ Los Angeles Times, Proposed desalination facility in Huntington Beach wins permit, February 10, 2012

⁵⁶ Los Angeles Times, Proposed desalination facility in Huntington Beach wins permit, February 10, 2012

⁵⁷ MDWOC Briefing Paper

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Orange County's Water Policy

As stated at the beginning of this study, Orange County does not have an agency that is responsible for water policy in the County. It does have several major agencies that coordinate the desires of the water retailers to ensure Orange County has a viable water policy that warrants sustainability. The following is the role of the various agencies:

MWDOC was formed in 1951 and consolidated with Coastal Municipal Water District in 2001, which provided wholesale imported water supplies to water agencies and cities serving the coastal areas of Orange County from Newport Beach south to San Clemente. MWDOC's primary responsibility is to ensure that the present and future water needs of its members are met through system and supply reliability. It represents its members at regional, state and federal levels by advocating for development and protection of water supplies, as well as planning and coordinating the water needs for its service area. The District also maintains an award winning water use efficiency program and coordinates countywide water/wastewater emergency preparedness and response efforts.

OCWD was formed in 1933 by a special act of the California State Legislature to protect Orange County's rights to water in the Santa Ana River. OCWD's primary responsibility is managing the vast groundwater basin under northern and central Orange County that supplies water to more than 19 cities and water agencies serving more than 2.3 million Orange County residents. Since 1933, OCWD has replenished and maintained the groundwater basin at safe levels while more than doubling the basins' annual yield. This important source of water provides local groundwater producers with a reliable supply of high-quality water.

OCWD primarily recharges the basin with water from the Santa Ana River and, to a lesser extent, with imported water purchased from the Metropolitan Water District of Southern California. OCWD currently holds rights to all Santa Ana River flows reaching Prado Dam. Water enters the groundwater basin via settling or percolation ponds in the cities of Anaheim and Orange. Behind Prado Dam (constructed and owned by the U. S. Army Corps of Engineers for flood prevention), it also owns 2,400 acres in Riverside County, which the District uses for water conservation and water quality improvement enhancement.

OCWD monitors the groundwater taken out each year to ensure that the basin is not overdrawn, refills the basin, and carries out an assessment program to pay for operating expenses and the cost of imported replenishment water. The groundwater basin holds millions of AF of water, and provides more than half of all water used within the District. Protection, safety and enhancement of groundwater are OCWD's highest priorities. OCWD is leading the way in purification of wastewater for reuse to provide a reliable, new, drought-proof high quality source of water.

Orange County's Present Water Policy Determination Process

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Presently, there is no agency or body that is responsible for setting the water policy for Orange County. Each water retailer, whether water district or city water department, determines what is in the best interest of their rate payers; that includes plans for the future and pricing. The agency that has assumed the responsibility of working with the water retailers to facilitate planning is MWDOC. Through coordination meetings at various levels, determination is made on what can be done to maintain the sustainability of water for the entire county.

The present water policy process does not lead to a formal planning document. However, it does lead to a set of various options that are under consideration by the various stakeholders.

Whether this process is the best way to deal with water sustainability is not a matter for this study. However, the process must be working well as Orange County is doing a good job of building infrastructure that has allowed it to use less imported water and utilize more local resources.

MWDOC is addressing the options in the prior section, and it does appear that coordination is bringing about cooperation between the diverse water interests in the county.

Should the County of Orange Be Involved in Setting Water Policy?

The 2012 – 2013 Orange County Grand Jury requested the opinion of the Orange County Board of Supervisors regarding the present water policy process and whether that function should come under their jurisdiction. The Board members had a diverse opinion. Generally, they believe that the present process is working well. Some thought it may be best to centralize authority with the Board of Supervisors.

The Grand Jury believes that adding another layer of bureaucracy would not improve the water policy making process. The subject matter is very technical in nature, which is why leaving it in the hands of existing water agencies makes more sense.

FINDINGS

In accordance with California Penal Code Sections §933 and §933.05, the 2012-2013 Grand Jury requires responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on the study, the 2012-2013 Orange County Grand Jury has arrived at eight principal findings, as follows:

F1 There is no central authority responsible for water policy in Orange County.

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- F2 MWDOC and OCWD in conjunction with the local water districts and city water departments are doing a comprehensive job of coordinating water planning.
- F3 Water use efficiency has helped ease the use of imported water.
- F4 Desalination is a possible future source of water.
- F5 The Groundwater Replenishment process is having a favorable impact on relieving the dependency on imported water.
- F6 Only a few water districts in Orange County use tiered pricing for water conservation.
- F7 Cadiz, while a controversial water supply and storage project, is a possible future source of water.
- F8 Bay Delta Project is critical to ensure the continual flow of imported water into Orange County.

RECOMMENDATIONS

California Penal Code Sections §933 and §933.05 require governing bodies and elected officials to which a report is directed to respond to findings and recommendations. Responses are requested from departments and local agencies and their non-elected department heads.

In accordance with *California Penal Code Sections §933 and §933.05*, the 2012-2013 Grand Jury requires responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on the study, the 2012-2013 Orange County Grand Jury makes the following seven recommendations:

- R1 MWDOC and OCWD should continue their role in coordinating water planning. (F1, F2)
- R2 MWDOC shall find additional ways of promoting water use efficiency. (F3)
- R3 Desalination must be included in any discussion of future water sources for Orange County. (F4)
- R4 The Groundwater Replenishment project shall continue looking for additional ways in which its water can be used. (F5)

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- R5 MWDOC shall continue providing data to the water districts and city water departments encouraging tiered pricing to assist with water conservation. (F6)
- R6 Water districts in South Orange County shall consider the Cadiz Project in any discussion on sustainability of water in the southern part of the county. (F7)
- R7 All the Orange County Water Districts shall support legislation for the Bay Delta Conservation Plan to ensure sustainability of imported water to Orange County. (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, Sherriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, the *California Penal Code* Section §933.05 (a), (b), and (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 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

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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.

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

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

Responses Required:

Board of Directors of the Municipal Water District of Orange County: F1, F2, F3, F4, F6, F7, F8

Board of Directors of the Orange County Water District: F1, F3, F5, F8.

Responses Required:

Board of Directors of the Municipal Water District of Orange County: R1, R2, R3, R4, R6, R7

Board of Directors of the Orange County Water District: R1, R3, R5, R7

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**OCTA's ACCESS Service The Way to
Go!!!!**



2012-2013

OCTA's ACCESS Service **The Way to Go!!!!**

SUMMARY

The Orange County Transit Authority (OCTA) is responsible for the public transportation services in Orange County. It provides fixed-route public transportation, rail service, manages the State Route 91 Express Lanes, and coordinates some freeway, street and road improvement projects.

In conjunction with its fixed-route bus service, OCTA is required to provide complementary paratransit service to fulfill the public transportation requirements of the Americans with Disabilities Act (ADA) of 1990. Complying with the regulations of the U.S. Department of Transportation (DOT) fulfills those ADA requirements.

ACCESS is OCTA's shared-ride paratransit service for people who are unable to use the regular fixed-route bus service because of functional limitations due to developmental or physical disability.

OCTA's ACCESS service provides a critical and much-needed paratransit service for its qualified passengers. This study provides details on the service, its processes, contracting practices, and performance.

REASON FOR STUDY

The purpose of this study is to examine the efficiency and effectiveness of the ACCESS service to determine if this program is meeting the transportation needs of ACCESS eligible residents and eligible visitors to Orange County. Additionally, this study seeks to identify ways to provide sustainable ACCESS service that are consistent with the current budget and funding forecasts.

METHOD OF INVESTIGATION

The Grand Jury conducted in-depth discussions about the ACCESS service with members of OCTA's Transit Division and Community Transportation Services (CTS) management,¹ accompanied ACCESS bus passengers to assess the adequacy of bus service and its ease of use, and visited the OCTA's new indoor transit simulator facility in Anaheim to observe the ACCESS eligibility evaluation process.² In addition, Grand Jury reviewed a number of OCTA's documents related to transit and the ACCESS service, including:

- Fiscal Years³ (FYs) 2011-12 and 2012-13 funding for ACCESS service⁴

¹ Meetings with OCTA management on 23 August and 28 September 2012

² ACCESS bus ride and visit to ACCESS eligibility assessment facility on 14 November 2012

³ OCTA's FY is from July 1 (current year)-June 30 (following year)

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- Veolia Transportation Services, Inc. Agreement No. C-5-3021 and Amendments 1 through 6
- C.A.R.E. Evaluators⁵ Agreement No. C-0-1937 and Amendments 1 through 2
- Paratransit Growth Management Plan (2004)
- ACCESS Rider's Guide (July 2009)
- Destination 2035: OCTA Long Range Transportation Plan (2010)
- OCTA Agreement No. C-0-1407 with Yellow Cab of Greater Orange County for the Provision of Same-Day Taxi Services (June 2010)
- OCTA Strategic Plan (February 2011)
- Smart Dial-A-Ride for Demand-Responsive Transit Operations: Research and Development of a Concept of Operations (May 2011)
- OCTA Approved Budget Fiscal Year 2011-12 (June 2011)
- OCTA Internal Audit Report 11-509 "Review of Veolia Transportation Services, Inc. Agreement No. C-5-3021 for ACCESS services and Scheduling of Non-ADA Same-Day Taxi Services" (September 2011)
- OCTA 2011 ACCESS Customer Satisfaction Survey Report (November 2011)
- OCTA Case Study –Integrated Transit Management System (November 2011)
- OCTA Transit System Study (TSS) Final Report (April 2012)
- OCTA Approved Budget Fiscal Year 2012-13 (May 2012)
- OCTA Fleet Plan Update Staff Report (September 2012)
- OCTA Transit Division Performance Measurements Report for the Fourth Quarter of Fiscal Year 2011-12 (October 2012)
- ACCESS service Map with Fixed-Route Overlay (October 2012)
- OCTA Comprehensive Business Plan Fiscal Year 2012-13 (November 2012)
- ACCESS service related news articles
- OCTA Special Needs Advisory and Transit Committee agenda and minutes

BACKGROUND AND FACTS

OCTA, a \$1.1 billion dollar⁶ multi-modal⁷ transportation agency, was formed in 1991 through consolidation of the former operating agency (the Orange County Transit District), the planning and funding agency (the Orange County Transportation Commission), and several other transportation related agencies. This saved county taxpayers tens of millions of dollars through increased efficiency and the elimination of duplicate functions. As an organization, OCTA is responsible for providing coordinated, effective, and accountable transportation planning and public transportation services within Orange County to its 3 million residents and millions of visitors. It is comprised of

⁴ Source: Information provided by OCTA

⁵ C.A.R.E.Evaluators, LLC is a consulting company specializing in providing health and wellness related evaluations and services for public and private organizations.

⁶ Source: OCTA Approved Budget for FY 2011-12 and FY 2012-13

⁷ Combination of two or more modes of transport

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seven distinct programs with unique characteristics and objectives. The seven programs (Bus Operations, Rail, Measure M (M1), Renewed Measure M (M2), the 91 Express Lanes, Non-Program Specific Planning and Capital Projects, and Motorist and Taxicab Services) work together to accomplish OCTA's mission, "To develop and deliver transportation solutions to enhance the quality of life and keep Orange County moving."⁸

OCTA's bus operations program is tailored to various market demands and needs, and delivers fixed-route, express, Metrolink station shuttles, and the federal Americans with Disabilities Act (ADA) of 1990 mandated complementary paratransit service. The paratransit service, known as ACCESS, was implemented in Orange County in 1993. Demand for ACCESS has grown significantly since FY 2000-01 when OCTA adopted a policy of "zero denials" to comply with ADA requirements⁹ and continues to see increases in both ridership and cost.

What is ACCESS?

ACCESS is OCTA's shared-ride paratransit service for people who are unable to use the regular fixed-route bus service because of functional limitations due to developmental or physical disability. Within public service areas, ACCESS service is required to meet the paratransit service requirements described in the U.S Department of Transportation (DOT) Title 49 Section 37.131 of the Code of Federal Regulations. These requirements are:

- Service must operate during the same hours and days as fixed-route service and within a $\frac{3}{4}$ -mile corridor¹⁰ of fixed-route service.
- Fares may be no more than twice the base fixed-route fare.
- Advance reservations are required.
- Trips cannot be denied.
- A formal process is required to determine customer eligibility for the service.
- A process to appeal an eligibility determination must be established.

ACCESS Eligibility Requirements

ACCESS customers are certified by OCTA to use the ACCESS service by meeting the ADA eligibility criteria. A person is eligible for OCTA ACCESS service if an individual is:

- Unable to board or exit a fixed-route bus.
- Unable to get to or from a bus stop¹¹ due to a physical or environmental barrier.

⁸ Source: OCTA Comprehensive Business Plan FY 2012-13

⁹ Source: Veolia Transportation Services, Inc., Agreement No. C-5-3021, Amendment No. 4, Exhibit A-1

¹⁰ An area extending $\frac{3}{4}$ of a mile, in each direction, from an operating OCTA fixed-route line

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- Unable to understand how to ride the bus due to a cognitive disability and/or limitation.

Eligibility is based on a person's functional limitations due to a disability, not a specific diagnosis or disability, age, distance to a bus stop, overcrowded buses, weather conditions, trip distance and comparable travel time on fixed-route buses, or lack of bus service to an area.

ACCESS Certification Process

The eligibility certification process consists of a completed ACCESS application¹², followed by an in-person functional assessment.¹³ Valid photo identification is needed to verify applicants for the in-person assessment, which includes a personal interview and observation of the applicant's functional abilities. OCTA has contracted the professional eligibility assessment services to C.A.R.E. Evaluators, which performs functional assessment at OCTA's new indoor transit simulator facility in Anaheim. The simulator facility is staffed by seven contract personnel including one physical therapist, two psychologists, three call center representatives, and an office manager. The professionals who conduct the evaluations (i.e., physical therapist and psychologists) have bachelor degrees and experience relating to the functional abilities of individuals with disabilities. Currently, C.A.R.E. Evaluators charges \$81.51 for each completed in-person functional assessment, and this rate will remain in effect during the base term of the contract (July 1, 2011- June 30, 2014).¹⁴

The \$53,000 indoor facility¹⁵, built as part of OCTA's contract with C.A.R.E. Evaluators, was unveiled in April 2012 and is one of only four indoor facilities in the nation. It is equipped with a 40-foot, 1998 model, fixed-route bus (leased by C.A.R.E. Evaluators from OCTA at a cost of \$1.00 per month¹⁶), sidewalks, wheelchair-accessible curbs, a crosswalk, and operating traffic signals to fully replicate a bus stop. Customers who apply to use ACCESS go through a series of tests that verify their eligibility to use the ACCESS service. These tests include boarding and exiting the bus, navigating through the center aisle, using the farebox, and determining how long it takes them to cross a simulated street. The simulator helps evaluate an applicant's abilities more accurately and testing can be completed within 30 minutes. Before the availability

¹¹ It involves traveling a certain distance and negotiating terrain with hills, cut curbs, and sidewalks, as well as orienting oneself in the community by recognizing landmarks and intersections, and then locating a bus stop.

¹² Application can be downloaded from OCTA website. It is a downloadable PDF file that needs Adobe Acrobat Reader to view the application and print it out.

¹³ For scheduling ACCESS in-person assessment, contact (714) 560-5956, Ext.2 or (714) 560-5474 (TDD)

¹⁴ Source: Agreement No. C-0-1937 dated 20 May 2011 between OCTA and C.A.R.E. Evaluators

¹⁵ Source: Amendment No. 1 dated 18 October 2011 to Agreement No. C-0-1937 dated 20 May 2011 between OCTA and C.A.R.E. Evaluators

¹⁶ Source: Amendment No. 2 dated 8 December 2011 to Agreement No. C-0-1937 dated 20 May 2011 between OCTA and C.A.R.E. Evaluators

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of this new indoor transit simulator facility, applicants were taken outdoors to test their ability to navigate uneven surfaces and curbs, but did not board a bus. Additionally, the outdoor evaluation lasted about an hour. If an applicant uses a mobility device (e.g., a wheel chair), the mobility device is required for the assessment interview to ensure the mobility device meets or is within ADA guidelines. A video "ACCESS Service" is also shown during the certification process to introduce applicants to ACCESS service. While the current video is helpful, it does not meet ADA guidelines as the video is not closed-captioned. The entire assessment process, including travel to and from the appointment, may take from four to six hours.

ACCESS applicants are notified by mail regarding their eligibility determination within 21 days following the submission of a completed application. If eligible, an ACCESS identification number and a Rider's Guide (currently dated July 2009) describing the ACCESS service and booking process is included with the notification letter. Applicants who are denied ACCESS eligibility are sent a letter explaining the reasons for denial and informing them of their right to appeal the decision and instructions on how to submit an appeal. ACCESS eligibility is valid for up to five years. At the expiration of the eligibility period, an ACCESS customer may be recertified.

Currently, on average, a total of 510 persons are certified/recertified each month (6,120 per year) to use the ACCESS service. Table 1 shows ACCESS eligibility certifications for FYs 2008-12.¹⁷

Table 1. ACCESS Eligibility Certifications

	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
No. of Applicants	6,289	6,839	6,394	6,336	5,749
Approvals	6,035	6,640	6,278	6,196	5,624
Denials	254	199	116	140	125
% Denial Rate	4.0%	2.9%	1.8%	2.2%	2.2%

According to OCTA, the primary reason for ACCESS service denial is an applicant's ability to independently use fixed-route service. The denial rate is low because many potential ACCESS customers who call to inquire about the service do not complete the two-step eligibility certification process once they become aware of the comprehensive eligibility assessment process.

ACCESS Eligibility Categories

There are four different categories of eligibility for ACCESS customers:

- Unrestricted category applies to individuals unable to use fixed-route service under any circumstances due to their disability or medical condition. They are eligible to use ACCESS service for all trips as identified by the certification analyst.

¹⁷ Source: Information provided by OCTA

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- Conditional category applies to individuals that make some trips on the fixed-route service under certain conditions and are eligible to use ACCESS service for limited circumstances identified by the certification analyst.
- Trip-by-Trip category applies to individuals unable to use accessible fixed-route bus service for certain trips due to architectural and/or environmental barriers. They are eligible to use ACCESS service for trips identified by the certification analyst.
- Temporary category applies to individuals unable to use accessible fixed-route bus service at this time but the condition or circumstance(s) leading to eligibility is reasonably expected to change within a specifically determined time frame of less than three years.

ACCESS Service Types

ACCESS service is available seven days a week in the same areas and during the same hours as fixed-route bus service. Types of ACCESS service are as follows:

- Standard Service: Curb-to-curb service for riders certified by ACCESS.
- Door-to-Door Service: An additional service where the driver escorts the passenger to or from the vehicle at either end of the trip. This service is provided at an additional cost.
- Subscription Service: Regular Service for eligible ACCESS customers without the need to call and request each trip. This service is good for riders who take the same trip on a regular basis, for instance to work, school, regularly scheduled medical appointments, etc.
- Same-Day Taxi Service: This service is an alternative transportation choice (i.e., a service not required under the ADA) for ACCESS eligible riders. Riders call to schedule a trip on the day they are ready to travel. The taxi service is not restricted to the $\frac{3}{4}$ mile corridor requirement, includes taxis that can accommodate persons using mobility devices, and takes place within Orange County. Scheduling a ride in an accessible taxi depends on vehicle availability.

Currently, there are approximately 60,000 ACCESS eligible customers. Of the 60,000, 26,000 are active customers who use ACCESS service at least two times per year.¹⁸

ACCESS customers contact OCTA at (714) 560-5956 to report any change in address or telephone number, or to update emergency contact information.

Reserving/Cancelling an ACCESS Ride

¹⁸ Source: Information provided by OCTA

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Certified individuals can schedule an ACCESS ride from one to three days in advance to allow schedulers to more efficiently route vehicles. Due to the number of ACCESS trip requests, OCTA is not always able to give riders the exact time they request. OCTA works with riders to establish agreeable pick-up times as ADA allows for a negotiated pick-up time of up to one hour on either end of the trip. OCTA offers trip times as close as possible to those requested, with a 30-minute pick up time window. However, if a rider refuses the negotiated trip time, it is considered a customer trip refusal, and not an OCTA denial of service. ACCESS service attempts to schedule rides efficiently and effectively. However, because ACCESS is a shared-ride service, a trip can be 90 minutes long and may be shared with other riders in compliance with ADA laws.

ACCESS Service Hours

ACCESS service hours are generally from 5:00 a.m. to 10:00 a.m., Monday through Friday and 6:00 a.m. to 8:00 p.m., Saturday, Sunday, and Holidays throughout most of OCTA's fixed-route service area. However, additional service hours are available in some areas. As the fixed-route service area expands during the day and contracts into the evening, the ACCESS service area changes to reflect the fixed-route network. The overall span of service, that is the time of the first pick-up until the time of the last drop-off, is approximately from 3:30 a.m. until 2:00 a.m. on weekdays, and approximately 4:00 a.m. to 2:00 a.m. on weekends. To enquire if a location is served by ACCESS during various times of the day, customers can check with ACCESS Reservations at (714) 560-5888, (949) 857-7188, (877) 628-2232, and (800) 564-4232 (hearing impaired). ACCESS service is provided wherever fixed-route service is available with service hours the same as the fixed-route bus service in each area.¹⁹

ACCESS Ride Request (or reservation) and Information Hours

- Monday-Friday: 7 a.m.- 5 p.m.
- Saturday, Sunday, and Holidays: 8 a.m.- 5 p.m.

To request an ACCESS ride or make Same-Day taxi reservation, the contact numbers are: (714) 560-5888, (949) 857-7188, (877) 628-2232, and (800) 564-4232 (hearing impaired). Calls should be made during ACCESS reservation hours. Each call is limited to scheduling rides for one eligible rider. There is no limit to the number of rides that can be scheduled within the 3 day period for the eligible rider. An exception is if the caller is scheduling rides for individuals going from the same origin to the same destination at the same time. The caller may schedule rides for up to eight eligible riders.

¹⁹ Source: Information provided by OCTA

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ACCESS Ride Status and Cancellation Hours

- Monday-Friday: 5 a.m.-10 p.m.
- Saturday, Sunday, and Holidays: 6 a.m.- 8 p.m.

Trips on an ACCESS bus must be cancelled at least one hour before the pick-up time or as soon as it is known that a trip is not needed so schedulers can plan the vehicle routes more effectively for other customers. Subscription customers canceling periods of one month or more lose their subscription service. Subsequently, future requests for subscription service are treated as new requests.

To check the status of an ACCESS ride or Same-Day taxi service and/or cancel an ACCESS ride or Same-Day taxi reservation, the contact numbers are: (714) 560-5888, (949) 857-7188, (877) 628-2232, and (800) 564-4232 (hearing impaired). Calls should be made during ACCESS cancellation hours.

OCTA uses the "Trapeze"²⁰ Computer-Aided Scheduling and Dispatch (CASD) system for reservations, scheduling, dispatching, and reporting. The CASD system improves vehicle routing, which increases the number of shared trips and reduces extra or single trip miles. Passenger and daily operations data such as calls received, calls un-accommodated, calls denied, calls served, no-show calls and no-pick-ups are also reported and stored electronically to measure ACCESS service performance. However, one of the Trapeze functions, the use of automated phone reminders to ACCESS customers is not currently incorporated into ACCESS operations.

ACCESS No-Show Policies

In accordance with Section 37.125 (h) of the ADA regulations, paratransit service can be suspended for a customer who establishes a "pattern or practice" of missing scheduled trips. A no-show is counted when an ACCESS rider is not at the designated location at the scheduled pick-up time or cancels a ride reservation less than one hour before the scheduled trip. If the rider is not at the pick-up location at the scheduled time, the driver waits five minutes before indicating the rider is a no-show. In addition, a rider receives a no-show indication if a required care provider or agency representative is not present to receive the rider at the drop-off destination and the rider cannot be left alone. There are penalties for three or more no-show occurrences in a single month, which can be appealed to a formal appeals board. When no-shows happen in a month, the following occurs:

- First No-Show: No action is taken.
- Second No-Show: A warning letter is issued to the customer specifying OCTA's intent to suspend ACCESS service if an additional No-Show/Late Cancellation occurs during the month. Information about the appeal process

²⁰ Source: Veolia Transportation Services, Inc. Agreement No. C-5-3021, Amendment No. 4, Exhibit A-1

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is included with the warning letter. A phone call is made to visually impaired riders.

- Third No-Show: A 30-day notice of temporary suspension of service is sent to the customer if an appeal is not received in writing. Complete information about the appeals process is included with the service suspension letter.

A rider may appeal any no-show/late cancellation believed to be incorrect or beyond the rider's control and has 65 days to appeal the suspension in writing. The customer receives notification of the appeal decision before a suspension takes effect.

If a subscription customer receives two service suspensions in a floating 24-month period, the subscription service is cancelled and the customer is required to call ACCESS to book all future trips.

ACCESS Fares

In accordance with the ADA requirements, ACCESS fares may be no more than twice the base fixed-route fare, with Measure M²¹ providing a 10 percent subsidy. All customers pay exact fare in cash, coupons, or any combination when boarding the ACCESS bus. Customers without the exact fare are transported but no change is returned. It is noted effective July 1, 2012, shipping and handling charges are applied to ACCESS coupon purchases made online, over the phone, or via mail. To avoid shipping and handling charges, ACCESS coupons can be purchased online, as well as from all pass sale outlets, for example, the OCTA store (550 S. Main Orange, CA 92868), Northgate Market, Vons, Pavilions, and Ralphs grocery stores. Coupons are sold in packs of 10.

In accordance with the ADA regulations, one Personal Care Attendant (PCA) may ride free if accompanying a customer who is eligible to have a PCA. The need for a PCA is determined during the ACCESS certification process for each ACCESS customer. In addition to a PCA, one companion is permitted to accompany an ACCESS-eligible customer and is required to pay the full fare for the ACCESS trip. If accompanied by children, up to three children, 5-years old and younger, can ride free with each ACCESS-certified, fare-paying customer. OCTA's ACCESS service also complies with federal regulations regarding the total number of subscription trips scheduled, which is offered on a space available basis dependent on vehicle routing. All applicable ACCESS fares are paid by the customer for these trips.

Due to the economic recession which started in 2008, OCTA's farebox revenue (passenger fares) from bus operations decreased from \$54.6 million in FY 2008-09 to \$50.6 million in FY 2011-12. The operating costs rose from \$98.01 per revenue hour in

²¹ Source: ACCESS fares are subsidized by Measure M, the half-cent sales tax approved by Orange County voters in 1990 and extended in 2006 for another 30 years from 2011 through 2041.

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FY 2008-09 to \$108.34 per revenue hour in FY 2011-12. To cover rising operating costs, sustain the current level of bus service, and to qualify for sales tax funding by meeting the state-mandated 20 percent farebox recovery ratio requirement,²² OCTA Board approved an overall, average fare adjustment of 25 percent per boarding in November 2012. The fare adjustment impacted both the fixed-route and ACCESS services and was effective since February 10, 2013. A fare increase was postponed two years ago due to the recession. Table 2 presents ACCESS bus fare information for both FYs 2011-12 and 2012-13.²³

Table 2. ACCESS Bus Fare (one-way)

Fare Type	Fare Structure (see note 1)		% Increase
	FY 2011-12	FY 2012-13	
ACCESS Standard (curb-to-curb) Service (total fare)	\$3.00	\$4.00	33.33%
<i>Measure M pays</i>	\$0.30	\$0.40	33.33%
ACCESS Standard (curb-to-curb) Service (rider pays)	\$2.70	\$3.60	33.33%
Companion of ACCESS Rider (total fare)	\$3.00	\$4.00	33.33%
<i>Measure M pays</i>	\$0.30	\$0.40	33.33%
Companion pays	\$2.70	\$3.60	33.33%
Personal Care Attendant (PCA) of ACCESS Rider	free	free	N/A
ACCESS Door-to-Door Service (total fare)	\$5.00	\$5.00	0.00
<i>Measure M pays</i>	N/A	N/A	N/A
ACCESS Door-to-Door Service (each time a rider is escorted, rider pays.)	\$5.00	\$5.00	0.00%

Note 1: In accordance with the ADA regulations, ACCESS fares may be no more than twice the base fixed-route fare²⁴, which was \$1.50 for FY 2011-12 and is \$2.00 for FY 2012-13.

Same-Day Taxi Service Fare

OCTA modified fare policies for Same-Day taxi service in July 2012 and has been subsidizing up to five miles on a Same-Day taxi trip, up from three miles. For a five-mile ride, a customer pays the ACCESS standard fare (cash or credit card only) and any additional costs above the five mile trip. For example, OCTA's FY 2011-12 subsidy amounts²⁵ are as follows:

- Up to 3-miles: \$2.70 (fare) + \$7.30 (OCTA subsidy); total \$10.00 (one-way)
 - 3.1 - 4 miles: \$2.70 (fare) + \$9.80 (OCTA subsidy); total \$12.50 (one-way)
 - 4.1 - 5 miles: \$2.70 (fare) + \$11.80 (OCTA subsidy); total \$14.50 (one-way)
- ACCESS fare coupons are not accepted for the Same-Day taxi services.

²² Collect from passengers a minimum of 20 cents for every dollar spent on operating the service

²³ Source: OCTA Website

²⁴ Source: U.S. Department of Transportation, Title 49, Section 37.131 of the Code of Federal Regulations (CFR)

²⁵ Source: Information provided by OCTA

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Companions or PCAs of an ACCESS customer travel in the same taxi as space allows at no additional cost. This service is good for quick, short-distance trips and takes place in a taxi within Orange County only.

ACCESS Buses

Vehicles used for ACCESS service include small buses (that can accommodate two to five wheelchairs), vans, and taxis. OCTA currently has an ACCESS dedicated, active fleet of 248 low emission gasoline powered buses (a 6 percent reduction since FY 2008-09) operated and maintained by Veolia Transportation. The service area is 798 square-miles providing more than one million annual trips to ACCESS customers in Orange County. Out of 248 buses, 17 cutaway style buses²⁶ in the ACCESS fleet have exceeded the minimum Federal Transit Administration regulations prescribed age and mileage criteria for replacement, which is five years or 150,000 miles²⁷ as these buses are either six years old or have an average mileage of 207,826. These 17 ACCESS vehicles are in need of replacement.

OCTA donates retired buses to cities that operate their own transit program such as the Senior Mobility Program (SMP). The number of buses each city receives at no cost is proportional to their allocated SMP funding. If a city needs additional buses over its SMP funding, it may obtain them for \$5,000 per vehicle. The charge for additional vehicles covers the costs of refurbishment and is deducted from the city's SMP funding in the following year.

OCTA's ACCESS buses have a manual farebox²⁸, which can accept fares in the form of coins, dollar bills, and coupons. Veolia, OCTA's ACCESS service operator, manually collects cash fare, records it in the Trapeze database, and deducts the amount from its monthly invoice. Coupon fares collected are returned to OCTA with Veolia's monthly report and invoice. This manual fare collection process is not cost-effective and can be improved by automizing the process.

OCTA buses use Mobile Data Terminals through which most of the communications (e.g. text messages) between dispatchers and drivers are carried out at pick-up, drop-off, and en-route. Direct radio contact is used only when necessary and mostly en-route for adjustments to the schedule, emergencies, or in case of no-shows to minimize driver distraction and maximize efficiency.

²⁶ A cutaway bus consists of a bus- body attached to a small- or medium-sized truck chassis behind and attached to the trucks' cabin. The backside of the cabin is cut away to allow access to and from the bus body.

²⁷ Source: OCTA Fleet Plan Update Staff Report dated 13 September 2012

²⁸ Source: Veolia Transportation Services, Inc., Agreement No. C-5-3021, Amendment No. 4, Exhibit B-1

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OCTA and ACCESS Budget

OCTA's public transit system, which includes the ACCESS service, is funded by a combination of federal, local and state funds. OCTA's approved annual budget for FY 2012-13 is about \$1.075 billion, a decrease of \$30.5 million compared to the FY 2011-12 budget of \$1.105 billion. Table 3 shows the OCTA budget details for both FYs 2011-12 and 2012-13.²⁹

Table 3. OCTA's Approved Annual Budget

	Approved Budget (In Millions)		Variance	Variance (%)
	FY 2011-12	FY 2012-13		
Sources				
Revenues	\$868.6	\$870.7	\$2.1	0.2%
Reserves	\$236.7	\$204.1	(\$32.6)	-13.8%
Total Revenue/Reserves	\$1,105.3	\$1,074.8	(\$30.5)	-2.8%
Uses				
Salaries and Benefits	\$147.3	\$147.9	\$0.6	0.4%
Services and Supplies (see note 1)	\$254.9	\$286.4	\$31.5	12.4%
Contributions to Other Agencies	\$321.1	\$299.9	(\$21.2)	-6.6%
Debt Service (see note 2)	\$29.2	\$35.2	\$6.0	20.5%
Capital Expenditures	\$226.5	\$189.1	(\$37.4)	-16.5%
Designations for future use	\$126.3	\$116.3	(\$10.0)	-7.9%
Total Expenditures/Designations	\$1,105.3	\$1,074.8	(\$30.5)	-2.8%

Note 1: These items include appropriations for the purchase of services (e.g., engineering, design, legal, and audit services) and supplies (e.g., fuel, office supplies, training, and travel).

Note 2: These funds are used for the accumulation of resources for and payment of, OCTA's long-term debt obligations, including principal, interest, and related costs.

All revenue sources for FY12-13 OCTA budget in Table 3 include the following:

- Fare box revenues (passenger fares generated from fixed-route and paratransit services (\$55.9 million).
- Local sources (Measure M2 (\$267.2 million) plus gas tax, property tax, advertising revenue, and contributions for projects from local jurisdictions (\$49.3 million)).
- Interest income on investments (\$20 million).

²⁹ Source: OCTA Approved Budget for FY 2011-12 and FY 2012-13

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- State sources (\$261.6 million).
- Federal sources (\$179.6 million).
- Toll revenues (\$37.1 million), and
- Reserves (Measure M1 cash reserve \$73.3 million, \$96 million from M2 bonds, \$32.9 million from Commuter and Urban Endowment, and \$1.8 million in other reserves).

OCTA has budgeted \$45 million for ACCESS service in FY 2012-13. Table 4 shows ACCESS budget for both FYs 2011-12 and 2012-13.³⁰

Table 4. ACCESS Budget

Operating Revenues and Costs	Budgeted Amount (FY2011-12)	% of Operating Costs (FY2011-12) (See note 1)	Budgeted Amount (FY2012-13)	% of Operating Costs (FY2012-13) (See note 1)
Operating Revenue				
Farebox Revenue	\$4,864,816	9.9%	\$4,870,963	10.8%
FTA 5307 Grants³¹				
ACCESS Operating Assistance	\$5,852,837	11.9%	\$5,882,805	13.1%
Cost of Contracting Assistance	\$19,253,118	39.3%	\$16,854,948	37.4%
Sales Tax	\$19,066,472	38.9%	\$17,432,932	38.7%
Total Revenue	\$49,037,243	100%	\$45,041,648	100%
Total Operating Costs	\$49,037,243	N/A	\$45,041,648	N/A

Note 1: % of operating cost is the ratio of total fare revenue/total operating expenses.

ACCESS service is operated under the Community Transportation Services of OCTA's Transit Division and is supported by 12 staff members.

ACCESS Contracts

Veolia Transportation: Veolia provides ACCESS service using OCTA's assets (i.e., OCTA's ACCESS dedicated fleet of 248 buses) and supplemental ADA vehicles, which could be taxis or vans. Veolia has subcontracted the ADA service to American

³⁰ Source: Information provided by OCTA

³¹ Source: U.S. FTA website (FTA 5307 is a formula grant program for urbanized areas providing capital, operating, and planning assistance for mass transportation. Funds are apportioned to urbanized areas using a formula based on population, population density, and other factors associated with transit services and ridership.)

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Logistics and operates/maintains ACCESS service from OCTA's Irvine Construction Circle facility. Trips provided by Veolia account for approximately 72% of all paratransit trips.³² Veolia also provides scheduling services for non-ADA Same-Day taxi services.

In 2006, the Veolia contract covered management and operation for ACCESS, Contracted Fixed Route, StationLink, and Express Bus Services. However, in July 2008, the contract was amended (Amendment No. 4) to provide these services in accordance with the existing scope of work through June 30, 2009. Beginning July 1, 2009, Veolia was to provide ACCESS services pursuant to a revised scope of work and rates for a term of three years ending on June 30, 2012. In September 2011, OCTA extended the contract through June 30, 2013. Table 5 shows contract rates since July 1, 2008 through June 30, 2013.³³

Table 5 Veolia's Contract No. C-5-3021

Contract/Amendment	Fixed Rate (per month)	ACCESS Variable Rate (per RVH)	Brokered Trips Variable Rate (per completed trip – taxi service)	Brokered Bookings Variable Rate (per booked trip – taxi service)
Amendment 4 (July 1, 2008- June 30, 2009)	\$287,844.42	\$38.04	\$28.98	\$1.34
Amendment 4 (July 1, 2009- June 30, 2010)	\$288,466.00	\$50.88	\$39.00	\$1.38
Amendment 4 (July 1, 2010- June 30, 2011)	\$300,722.00	\$53.33	\$39.00	\$1.42
Amendment 4 (July 1, 2011- June 30, 2012)	\$312,318.00	\$56.61	\$39.00	\$1.46
Amendment 5 (August 31, 2009)	Key personnel change and revised hours of operation			
Amendment 6 (July 1, 2011- June 30, 2012)	\$309,195.00	\$54.38	\$38.61	\$1.46
Amendment 6 (July 1, 2012- June 30, 2013)	\$312,318.00	\$54.92	\$38.61	\$1.46

For FY 2011-12, OCTA re-negotiated the ACCESS contract with Veolia reducing the Revenue Vehicle Hour (RVH) rates to \$54.38 per RVH and \$38.61 per taxi trip (see rows 4 and 6 in Table 5). The lower rates yielded cost savings of approximately \$1.2 million. Without this re-negotiation, the scheduled, pre-negotiated rates for the direct contract costs would have increased to \$56.61 per RVH and \$39 per subcontracted taxi trip for FY 2011-12.

³² Source: OCTA Comprehensive Business Plan Fiscal Year 2012-13 (November 2012)

³³ Source: Veolia Transportation Services, Inc. Agreement No. C-5-3021, Amendments 4 through 6

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OCTA projects a service delivery of 495,089 RVH of primary ADA ACCESS service in FY 2012-13, a decrease of about 10 percent from FY 2011-12. Veolia's contract value for FY 2012-13 ACCESS service is \$31 million, a reduction of about 11 percent from FY 2011-12.

Veolia employs 477 people, including 414 operations staff (e.g., call center representatives, schedulers, dispatchers, and drivers), 55 maintenance staff, and 8 administrative staff to support the ACCESS service.

American Logistics: Veolia has subcontracted the supplemental ADA vehicle service to American Logistics for providing ACCESS trips during peak and non-peak periods. This helps OCTA: keeping the size of the ACCESS fleet from increasing significantly, reducing ACCESS service cost, and increasing total system efficiency. The supplemental ADA vehicles also provide overnight services. Due to the fixed-route service area expansion during the day and contraction into the evening, the overall span of service (i.e., the time of first pick up until the time of the last drop off) is approximately from 3:30 a.m. until 2:00 a.m. (weekdays) and 4:00 a.m. to 2:00 a.m. (weekends). In each case, the scheduled pick-up window must begin during the ACCESS designated hours. The supplemental ADA vehicle service can also be used under the following circumstances: a vehicle breakdown, excessively late bus run, or operator shortages.

In FY 2012-13, the number of supplemental ADA taxi trips is projected to be 190,000, an increase of 11 percent over FY 2011-12 trips of 171,000. American Logistics' contract value for FY 2012-13 ADA taxi service is \$7.3 million, a 10 percent increase over the FY 2011-12 contract.

American Logistics employs 27 administrative staff members and has 317 drivers, who are independent contractors.

Yellow Cab of Greater Orange County: OCTA has contracted the Same-Day taxi service to Yellow Cab of Greater Orange County. This Agreement (C-0-1407) was initiated in June 2010, and included an initial term of two-years with a two-year option for \$319,742. Based on revised ridership projections, an amendment to increase the contract value by \$141,290 was implemented in December 2011. When demand for the Same-Day taxi service exceeded projections for FY 2011-12, OCTA executed another amendment in March 2012 to extend the Agreement C-0-1407 through June 30, 2014 in an amount not to exceed \$984,115. As such, the total cumulative contract value through June 30, 2014 is \$1,445,147.³⁴ Same-Day taxi trips are projected to be 56,063, a 108 percent increase over FY 2011-12 trips of 26,900.

C.A.R.E. Evaluators: This contract was initiated in May 2011 for a period of three years to evaluate individuals for ACCESS service eligibility. The C.A.R.E.

³⁴ Source: OCTA Agreement No. C-0-1407 with Yellow Cab of Orange County for the Provision of Same-Day Taxi Services (June 2010)

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Evaluators charge of \$81.51 for each completed in-person functional assessment will remain in effect during the base term of the contract (July 1, 2011- June 30, 2014). After that, OCTA has the discretion to extend the terms from July 1, 2014 through June 30, 2015 (Option 1) and then from July 1, 2015 through June 30, 2016 (Option 2). If these options are exercised, the assessment rate could increase to \$84.00 under Option 1 and to \$85.00 under Option 2. Table 6 shows contract details up to 2014.³⁵

Table 6 C.A.R.E. Evaluator's Contract No. C-0-1937

Contract/Amendment	Description
C-0-1937 (July 1, 2011-June 30, 2014)	\$81.51 (rate for per in-person assessment completed)
Amendment No. 1	\$53,000 (Assessment facility enhancement)
Amendment No. 2	\$1.00 per month (OCTA lease fee)

The total contract value for C.A.R.E. Evaluators' services in FY 2012-13 is \$440,100, a 33 percent decrease from FY 2011-12.³⁶

ACCESS Cost Control Strategies

ACCESS service levels grew significantly since FY 2000-01 when OCTA adopted a policy of "zero denials" to comply with ADA requirements and continued to see increases in both ridership and cost, consuming a significant portion of the transit budget resources. The Paratransit Growth Management Strategies³⁷ implemented in 2005 helped mitigate increasing service levels. To address significant cost increases, the ACCESS service delivery model was adjusted to include implementation of the taxi trip program and developing community partnerships with adult daycare agencies or community centers to provide alternate transportation options for persons with disabilities. Non-ADA Same-Day taxi service offers ACCESS eligible customers opportunity to schedule a partially subsidized taxi trip. This service is currently expanding to provide services over a greater coverage area³⁸. Agencies participating in community partnership programs get subsidy amounts from OCTA to provide services comparable to ACCESS services at a significantly lower cost per hour (or cost per trip). Diverting costly ACCESS trips to less expensive fixed-route bus service is another strategy identified in OCTA's Paratransit Growth Management Plan.

ACCESS Cost Control Strategies are evaluated using the OCTA's 2011 ACCESS Customer Satisfaction Survey results, where applicable. The survey was mailed to 13,578 customers; 2,732 (20%) were returned.³⁹

Same-Day Taxi Service: The survey results are summarized below:

³⁵ Source: Agreement No. C-0-1937 dated 20 May 2011 between OCTA and C.A.R.E. Evaluators

³⁶ Source: Information provided by OCTA

³⁷ Source: Paratransit Growth Management Plan (2004)

³⁸ Source: OCTA FY 2012-13 Comprehensive Business Plan

³⁹ Source: OCTA 2011 ACCESS Customer Satisfaction Report (November 2011)

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- More ACCESS customers were using the Same-Day taxi service since the 2008 survey – up from 23 percent to 32 percent (874 survey respondents)
- The level of satisfaction with the Same-Day taxi service among those who have used this service is very high – 83 percent very satisfied or somewhat satisfied. In 2008, the level of satisfaction was 70 percent.
- Among those 68 percent (1,858 respondents) who had not used this service, 57 percent (1,059 respondents) were not aware of this service.

The financial benefit of providing Same-Day taxi service is significant when comparing OCTA's cost of a Same-Day taxi trip at \$7.30 to the average cost per trip on ACCESS, which was \$42.86 in FY 2010-11. Assuming 1,858 survey respondents used the Same-Day taxi service, it would cost OCTA \$13,563 (1,858 x \$7.30). On traditional ACCESS, it would have cost OCTA \$79,634 (1,858 x \$42.86). This would generate an estimated savings of \$66,071. Therefore, the Same-Day taxi service is shown to be efficient and cost effective.

Community Partnership Program (CPP): Beginning in FY 2007, OCTA's Community Transportation Services implemented a new five-year subsidy agreement with four adult day healthcare facilities, expanding it to six adult daycare agencies or community centers in FY 2010 for ADA eligible customers, who would otherwise be using traditional ACCESS service. The funding for this program comes from local transportation funds of the California Transportation Development Act, public transit's primary state funding source. Table 7 summarizes the Community Partnership Program cost savings.⁴⁰

Table 7. Community Partnership Program Summary

Programs/Trips	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12
Acacia	9,938	34,220	37,099	35,703	29,453	27,323
Alzheimer Family Services	7,855	8,892	9,202	9,090	11,527	9,800
Community Senior Service			45,941	48,871	50,864	48,167
Orange County ARC	14,052	23,793	29,026	35,228	69,277	76,481
South County Senior Services	12,080	12,887	13,909	15,248	12,779	9,318
Sultan Adult Day Health Care				7,070	10,179	30,482
Total Trips (subsidized)	43,925	79,792	135,177	151,210	184,079	201,571
OCTA Cost	\$549,934	1,138,213	2,046,655	2,306,239	2,662,885	3,109,627
Avg. Cost/Trip using CPP	\$12.52	14.26	15.14	15.25	14.47	15.43
Avg. Cost /Trip on ACCESS	\$26.55	25.83	28.76	34.34	42.86	50.17
ACCESS	\$1,166,209	2,061,027	3,887,691	5,192,551	7,889,626	10,112,817
Cost Savings	\$616,275	922,814	1,841,036	2,886,312	5,226,741	7,003,190

Table 7 shows the financial benefits of using CPP. For example, in FY 2011, the community partnerships provided a total of 184,079 trips and OCTA's cost was

⁴⁰ Source: Information provided by OCTA

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\$2,662,885. The average cost per trip is \$14.47, a substantial savings compared to average cost per trip for ACCESS services, which is \$42.86. Additionally, if these 184,079 trips were taken on ACCESS, the total cost would have been \$7,889,626. Thus, using CPP, there is a significant cost saving of \$7,889,626 - \$2,662,885 = \$5,226,741 in FY 2011.

In FY 2012-13, the number of CPP trips is projected to be 212,707.

ACCESS Reduced Fare Identification Card (RFID): OCTA offers reduced fares (0.25 cents one-way) only for ADA eligible ACCESS customers on accessible fixed-route buses. A special identification card (ACCESS RFID) is required to get reduced fares. To apply for this RFID card, an application needs to be completed. The ACCESS customer contacts ACCESS Eligibility staff at (714) 560-5956 or (714) 560-5474 (hearing impaired) to receive an application. The completed application is mailed to ACCESS Eligibility staff for processing. After verification of the customer's ACCESS certification dates, the staff prepares the ACCESS RFID card using the digital photo included in the customer's ACCESS eligibility profile. The ACCESS RFID card is mailed to the customer within two weeks of receiving the completed application. A valid ACCESS RFID card must be shown to the fixed-route coach operator each time the ACCESS RFID card holder boards the bus.

Renewed Measure M (M2) does not subsidize the \$0.25 reduced fare for persons traveling with a valid ACCESS RFID. Similar to the free category for children under five years of age traveling with a fare paying adult, there is no subsidy provided to the fixed-route bus system for this reduced fare.

The 2011 ACCESS Customer Satisfaction Survey results about using ACCESS RFID are as follows:

- 75% of ACCESS customers (2,049) were not aware of the ACCESS RFID program that enables them to use fixed-route bus service for 25 cents per trip.
- 20% of ACCESS customers (546) also used the fixed-route bus system in addition to ACCESS service.
- Among the 80% of ACCESS customers (2,186) who have not used fixed-route buses, 34 percent (743) would consider the fixed-route training.

The financial benefit of using an ACCESS RFID will be significant if more ACCESS customers become aware of this program.

With a population increase forecasted to be 14 percent over the next 25 years, which may include disabled senior citizens, growth rates are expected to be 3 percent annually over the long-term. OCTA projects ACCESS service levels to increase by 13 percent from 2010-11 through 2014-15. ACCESS currently accounts for 26 percent of the total fixed-route and paratransit RVHs (or bus level of service), and is expected to

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grow to 38 percent by 2030-31.⁴¹ As such, OCTA should emphasize cost effective strategies and find additional ways to serve ACCESS customers.

Visitor Policy

ADA eligible visitors to Orange County can use the ACCESS service if they are unable to use the fixed-route system due to disability limitations. According to ADA regulations, an individual residing outside the service area is eligible for ACCESS service as a visitor if the following conditions are met:

- The individual presents documentation of ADA paratransit eligibility from his/her home jurisdiction.
- If such documentation is not available, then, proof of residence outside of Orange County, as well as a proof of disability is required, if it is not apparent.
- Acceptable proof of disability includes a letter from a doctor or the visitor's statement of inability to use the fixed-route system.

After an ADA visitor is found eligible, they get an ADA identification number including the Rider's Guide, and information about how to use the OCTA ACCESS paratransit service. Visitors pay the same fare as Orange County residents.

ACCESS Performance

OCTA uses performance metrics⁴² to evaluate the efficiency and effectiveness of ACCESS service. The key Measures of Effectiveness and Performance (MOEs/MOPs) that track service safety, courtesy and reliability are: preventable vehicle accidents, customer complaints, on-time performance, service delivery failure (a MOP specific to OCTA), and miles between road calls. In addition to these metrics, industry-standard performance measurements that assess ACCESS operations are: ridership, passenger fare revenues, operating costs, farebox recovery ratio, and cost per RVH. ACCESS performance for FY 2012 (July 1, 2011-June 30, 2012) compared to FY 2011 is summarized below.

Table 8. ACCESS Operational Performance Data

	FY 2011	FY 2012	% Change
Ridership	1,320,062	1,334,460	1.1%
Operating Expenses	\$45,596,777	\$48,137,535	5.6%
Passenger Fare Revenue	\$2,601,552	\$2,777,198	6.8%
Cost Per Revenue Vehicle	\$72.90	\$76.65	5.1%

⁴¹ Source: OCTA Approved Budget FY 2012-13

⁴² Source: OCTA Transit Division Performance Measurements Report for the Fourth Quarter of Fiscal Year 2011-12 (October 2012)

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Hour			
Fleet Miles	10,174,673	9,483,203	-6.8%
Miles Between Road Calls (for maintenance)	38,251	25,981	-32.1%
On-Time Performance	93.9%	93.3%	-0.6%
Service Delivery Failure	129	233	80.6%
Service Complaints per 1,000 boardings	1,741	2,007	15.3%
Safety (# of accidents)	77	67	-13%

In FY 2012, ACCESS service transported over 1.3 million customers in Orange County, a 1.1% increase in ridership from FY 2011. ACCESS met or exceeded operational performance standards (or budgetary goals) for ridership, operating expenses, cost per RVH, miles between road calls, and safety. The operating expenses and cost per RVH performance parameters met the budgetary goals of equal or less than \$55,706,243 (for operating expenses) and \$89.39 (for cost per RVH) but were higher in FY 2012 by 5.6% and 5.1%, respectively. ACCESS exceeded the reliability standard of 25,000 or more miles between road calls with a rate of 25,981 miles between road calls, a decrease by 32.1% from FY 2011 rate of 38,251 miles between road calls. The decrease in miles between road calls (maintenance reliability) of ACCESS buses was influenced by the age and mileage of the vehicles. For vehicle safety in FY 2012, ACCESS service met the standard of one or less preventable vehicle accidents per 100,000 miles with a rate of 0.71, a decrease of 6.6% from FY 2011 rate of 0.76 and recorded 67 accidents, a decrease of 13% from 77 accidents recorded in FY 2011.

Performance standards for ACCESS service reliability indicators (on-time performance and Service Delivery Failure (SDF)) and courtesy were not met. On-time performance for FY 2012 was at 93.3%, less than the performance standard of equal to or more than 95%. SDF, a measure specific to ACCESS service, shows an occurrence when a vehicle does not arrive at pick-up location until 90 minutes after the conclusion of a 30 minute on-time window (120 minutes). There were 233 such occurrences in FY 2012, an increase of 80.6% from 129 occurrences in FY 2011. For FY 2012, 1.5 customer complaints for every 1,000 trips (2007x1000/1,334,460) were recorded, which represents an increase of 14% from FY 2011 rate of 1.32 complaints for every 1,000 trips (1741x1000/1,320,062).

For amplifying information on ACCESS operational performance, refer to Appendix A in this report, which summarizes OCTA Transit Division Performance Report for the Fourth Quarter of FY 2011-12.

ACCESS Customer Satisfaction

OCTA conducts a periodic customer satisfaction survey⁴³ to evaluate customer opinions and perceptions regarding ACCESS service in an effort to understand the

⁴³ Source: OCTA 2011 ACCESS Customer Satisfaction Survey Report (November 2011)

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needs of its customers and to deliver quality service. A prior customer satisfaction survey was conducted in 2008.

In 2011, OCTA mailed out 13,578 surveys and 2,732 completed surveys were returned (a 20% response rate). Rea and Parker Research of San Diego conducted the survey, and tabulated data and analyzed the results of the ACCESS survey. The survey found that ACCESS customers continue to be very satisfied with the quality of the service and some may be able to use the lower cost fixed-route service. The survey also found a high level of satisfaction with the taxicab services.

For 2011 customer satisfaction survey details, refer to Appendix B in this report, which summarizes OCTA 2011 ACCESS Customer Satisfaction Survey Report.

FINDINGS

In accordance with *California Penal Code* Sections §933 and §933.05, the 2012-2013 Grand Jury requires responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of the OCTA ACCESS Service in Orange County, the 2012-2013 Orange County Grand Jury has arrived at twelve principal findings as follows:

- F1 ACCESS service fulfills the transportation needs of its qualified subscribers and ACCESS customers continue to be very satisfied with the quality of the ACCESS service.
- F2 Some of the ACCESS customers may be able to use the OCTA's lower cost fixed-route service which may reduce ACCESS service costs.
- F3 Standardizing the eligibility evaluation process has helped to accurately determine if a customer can use the fixed-route service for some trips, thereby, significantly reducing ACCESS service costs.
- F4 The current video "ACCESS Service" shown during the ACCESS eligibility certification process needs to be updated to meet ADA guidelines.
- F5 A majority of ACCESS customers are not aware of either the Same-Day taxi service or the reduced fare program on a fixed-route bus.
- F6 The current ACCESS Rider's Guide (July 2009) is outdated and needs to be updated.

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- F7 Cancelled rides and no-shows puts stress on dispatchers and reservationists to efficiently manage bus schedules.
- F8 The Interactive Voice Response (IVR) feature of the Trapeze system for automated phone reminders is not implemented.
- F9 No-shows are detrimental to the productivity of the ACCESS system impacting efficiency and operating cost per vehicle mile.
- F10 The current radio system on ACCESS buses uses old technology and does not meet the Federal Communications Commission's narrow-banding mandate⁴⁴.
- F11 ACCESS service is being influenced by the age and mileage of the ACCESS fleet vehicles, which impact maintenance reliability, increase vehicle downtime and maintenance costs, reduce vehicle availability, and diminish service quality.
- F12 ACCESS service fare collection process is manually driven and inefficient.

RECOMMENDATIONS

In accordance with *California Penal Code* Sections §933 and §933.05, the 2012-2013 Grand Jury requires responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of the OCTA's ACCESS service, the 2012-2013 Orange County Grand Jury makes the following seven recommendations:

- R1 Address the growth of ACCESS demand by using community partnerships, same-day taxi service, and emphasizing reduced fare fixed-route travel training during eligibility assessment process and outreach programs. (F2, F3, F5)
- R2 Consider using new technologies for ACCESS fare system such as Smart Card or cell phone applications to reduce processing cost of fare collected, customer complaints, and customer service related operational costs, as well as to improve travel time. (F12)
- R3 Replace ACCESS buses that have reached the end of their useful life and have exceeded minimum FTA regulatory requirements for age and mileage to limit and/or decrease operational/maintenance costs, control service failures, and improve efficiency of the service. (F11)

⁴⁴ Source: FCC Website (All public safety and industrial/business licensees in the 150-174 MHz and 421-512 MHz bands must either migrate to 12.5 kHz technology or use a technology that achieves equivalent efficiency.)

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- R4 Update the training video "ACCESS Service" to meet ADA video guidelines (i.e., incorporate closed-captioning feature) and use the video during certification process to educate and encourage ACCESS applicants to consider other transportation options such as the "reduced fare fixed-route" service to help lower ACCESS service costs. (F2, F3, F4)
- R5 Upgrade or replace ACCESS bus radio communication systems to meet FCC narrow-band mandate. Improve efficiency by eliminating multiple system logons by bus operators. (F10)
- R6 Incorporate IVR feature into the reservation process to alleviate demands placed upon reservationists and allow them to focus solely on scheduling trips, as well as to improve system efficiency and operating cost per vehicle mile. (F7, F8, F9)
- R7 Update the ACCESS Rider's Guide. (F6)

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 therefor.

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

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(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 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 Requested:

OCTA: F1, F2, F3, F4, F5, F6, F7, F8, F9, F10, F11, F12

Responses Requested:

OCTA: R1, R2, R3, R4, R5, R6, R7

COMMENDATION

To the management and staff of OCTA involved with ACCESS Service – A JOB WELL DONE!!!!

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Appendix A

ACCESS Service Performance¹

OCTA uses performance metrics to evaluate the efficiency and effectiveness of ACCESS service. The key measures of effectiveness and performance (MOEs/MOPs) that track service safety, courtesy and reliability are: preventable vehicle accidents, customer complaints, on-time performance, service delivery failure (a MOP specific to OCTA), and miles between road calls. Along with these metrics, industry-standard performance measurements that assess ACCESS operations are: ridership, passenger fare revenues, operating costs, farebox recovery ratios, and cost per revenue vehicle hour. ACCESS performance for FY 2012 (July 1, 2011-June 30, 2012) compared to FY 2011 (July 1, 2010-June 30, 2011) is summarized below.

- **Safety: Preventable vehicle accidents** are counts of incidents concerning physical contact between vehicles used for public transit and other vehicles, objects, or pedestrians where a coach operator failed to do everything reasonable to prevent the accident. To obtain a standardized measurement, the accident counts are multiplied by 100,000 then divided by the total miles on the vehicles used for public transit. OCTA's safety standard is no more than one vehicle accident per 100,000 miles. Table A-1 shows number of accidents and fleet miles for both FYs 2011 and 2012.

Table A-1 Safety: Preventable Vehicle Accidents per 100,000 Miles

Performance Measurement	Standard	FY 2011	FY 2012	Variance	Variance (%)
Safety	≤ 1 per 100,000	0.76	0.71	-0.05	-6.6%
Accidents	N/A	77	67	-10	-13%
Fleet Miles	N/A	10,174,673	9,483,203	-691,470	-6.8%

For FY 2012, ACCESS met the safety standard of one or less preventable vehicle accidents per 100,000 miles with a rate of 0.71, a decrease of 6.6 percent from FY 2011 rate of 0.76. Total accidents for the year decreased from 77 to 67, a decrease of 13 percent. It is noted though the fleet miles reduced by 6.8% in FY 2012.

- **Courtesy: Customer complaints** are counts of incidents where a user of public transit is dissatisfied with the service received. As ACCESS service does not record over 1,000,000 boardings per month, the statistics is factored by 1,000 and then divided by the total ridership. The standard for customer complaints is one valid complaint per 1,000 boardings for ACCESS service.

¹ Source: Transit Division Performance Measurements Report for the Fourth Quarter of Fiscal Year 2011-12

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Table A-2 shows number of customer complaints for both FYs 2011 and 2012.

Table A-2. Courtesy: Customer Complaints

Performance Measurement	Standard	FY 2011	FY 2012	Variance	Variance (%)
Courtesy	≤ 1 per 1,000	1.32	1.5	0.18	14%
Valid Complaints	N/A	1,741	2,007	266	15.3%
Passengers	N/A	1,320,062	1,334,460	14,398	1.1%

For FY 2012, ACCESS did not meet the courtesy standard of one or less complaints per 1,000 boardings with a rate of 1.5, an increase of 14 percent from FY 2011 rate of 1.32. Total valid complaints for the year increased from 1,741 to 2,007, an increase of 15.3 percent and ridership increased in by 1.1%, respectively.

Reliability of ACCESS service is measured using three performance metrics: on-time performance, service delivery failures, and miles between road calls.

- **Reliability: On-time performance (OTP)** is a measure of performance evaluating a revenue vehicle's adherence to a scheduled pick-up time for transportation on a demand-responsive schedule. On ACCESS, a trip is on-time as long as the revenue vehicle arrives no later than the 30-minute window of the scheduled pick-up time. Table A-3 shows on-time performance data for both FYs 2011 and 2012.

Table A-3. Reliability: On-time Performance

Performance Measurement	Standard	FY 2011	FY 2012	Variance	Variance (%)
Reliability: On-time Performance	≥ 95%	93.9%	93.3%	-0.6%	-0.64%

For FY 2012, ACCESS did not meet the reliability standard of operating on-time at 95 percent or more with a rate of 93.3 percent, a decrease of 0.64 percent from FY 2011 rate of 93.9 percent.

- **Reliability: Service Delivery Failure (SDF)** is a unique measurement specific to ACCESS service. This indicator is an occurrence when a vehicle does not arrive at the pick-up location until 90 minutes after the conclusion of a 30-minute on-time window (i.e., 120-minutes). Table A-4 shows SDF data for both FYs 2012 and FY 2011.

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Table A-4. Reliability: Service Delivery Failure

Performance Measurement	Standard	FY 2011	FY 2012	Variance	Variance (%)
Reliability: Service Delivery Failure	0	129	233	104	80.6%

In FY 2012, ACCESS did not meet the SDF standard of zero service delivery failures. ACCESS recorded 233 SDFs, an increase of 80.6 percent from FY 2011 results of 129. Overall, SDFs accounted for less than one percent of the total trips provided annually.

- **Reliability: Miles Between Road Calls** is a maintenance performance indicator that measures the vehicles between mechanical failures of a vehicle used for public transit during revenue service (i.e., in active use). Road calls may cause a delay in service and necessitate removing the vehicle from service until repairs are made. Table A-5 shows number of road calls both in FYs 2011 and 2012.

Table A-5. Reliability: Miles Between Road Calls

Performance Measurement	Standard	FY 2011	FY 2012	Variance	Variance (%)
Reliability: Miles Between Road Calls	≥ 25,000	38,251	25,981	-12,269	-32.1%
Valid Road Calls	N/A	266	365	99	37.2%
Fleet Miles	N/A	10,174,673	9,483,203	-691,470	-6.8%

In FY 2012, ACCESS exceeded the reliability standard of 25,000 or more miles between road calls with a rate of 25,981, a decrease by 32.1 percent from FY 2011 rate of 38,251. Total road calls for the year increased from 266 in FY 2011 to 365 in FY2012, an increase of 37.2 percent. Maintenance reliability is influenced by the age and mileage of the vehicles. Currently, the average age of the fleet is approximately four years, and the average mileage per vehicle is nearly 150,000.

- **Ridership** (or boardings) is the number of rides taken by passengers using public transit, which is influenced by the weather, economy, and seasonal variations in demand. Table A-6 shows ridership for both FYs 2011 and 2012.

Table A-6. Ridership

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Performance Measurement	Budget Goal	FY 2011	FY 2012	Variance	Variance (%)
Ridership	≥ 1,148,487	1,320,062	1,334,460	14,398	1.1%

In FY 2012, ACCESS met the ridership goal of 1.15 million boardings with 1.33 million, an increase of 1.1 percent in ridership from FY 2011 result of 1.32 million. Comparing the factors impacting ridership between fixed-route and paratransit, many ACCESS trips are non-discretionary i.e., for medical appointments or to attend day programs provided to persons with special needs, unlike fixed-route ridership which is more heavily impacted by changes in the local economy, in particular, the unemployment rate and gas prices.

- **Passenger Fare Revenues** are the total revenues collected through the payment of passenger fares, which includes cash and pre-paid fares (coupons). Table A-7 shows passenger fare revenues for both FYs 2011 and 2012.

Table A-7. Passenger Fare Revenues

Performance Measurement	Budget Goal	FY 2011	FY 2012	Variance	Variance (%)
All Paratransit	≥ \$4,827,44	\$5,135,700	\$4,948,207	\$(187,493)	-3.7%
ACCESS	N/A	\$2,601,552	\$2,777,198	\$175,646	6.8%

In FY 2012, all paratransit exceeded the annual budget target for passenger fare revenues of \$4.8 million with \$4.9 million. This represents a decrease of 3.7 percent from FY 2011 results of \$5.1 million. Revenues for FY 2012 were lower from FY 2011 because the Senior Nutrition Transportation Program was no longer under OCTA's paratransit umbrella.

- **Operating Expenses** include the total expenses to operate and maintain the transit system including labor, fuel, maintenance, wages and salaries, employee benefits, taxes, and other costs associated with transit operations. Table 16 presents operating expenses for FYs 2011 and 2012. Table A-8 shows operating expenses for both FYs 2011 and 2012.

Table A-8. Operating Expenses

Performance Measurement	Budget Goal	FY 2011	FY 2012	Variance	Variance (%)
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All Paratransit	≤ \$59,376,605	\$48,915,097	\$51,225,008	\$2,309,911	4.7%
ACCESS	≤ \$55,706,243	\$45,596,777	\$48,137,535	\$2,540,757	5.6%

In FY 2012, all paratransit expenses were lower than the annual budget target for operating expenses of \$59.4 million with \$51.2 million. This represents an increase of 4.7 percent from FY 2011 result of \$48.9 million. ACCESS met the annual budget target for operating expenses of no more than \$55.7 million with \$48.1 million. This represents an increase of 5.6 percent from FY 2011 result of \$45.6 million.

- **Farebox Recovery Ratio** is a measure of the proportion of operating costs covered by passenger fares calculated by dividing the farebox revenue by total operating expenses. Table A-9 shows farebox recovery ratio for both FYs 2011 and 2012.

Table A-9. Farebox Recovery Ratio

Performance Measurement	Budget Goal	FY 2011	FY 2012	Variance	Variance (%)
All Paratransit	≥ 9.8%	10.5%	9.7%	-0.8%	-8%
ACCESS	N/A	5.7%	5.8%	0.1%	1.8%

In FY 2012, all paratransit did not meet the annual budget target for the farebox recovery ratio of 9.8 percent or more with a ratio of 9.7 percent, a decrease of 0.8 percent from FY 2011 ratio of 10.5 percent. The ratio was affected by the lower fare revenues collected despite operating costs holding steady.

- **Cost per Revenue Vehicle Hour (RVH)** is one of the many industry standards used to measure the cost efficiency of transit service and establishes the financial resources needed to produce an hour of revenue service. It is calculated by dividing operating expenses by RVH. Table A-10 shows cost per revenue vehicle hour for both FYs 2011 and 2012

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Table A-10. Cost Per Revenue Vehicle Hour

Performance Measurement	Budget Goal	FY 2011	FY 2012	Variance	Variance (%)
ACCESS	≤ \$89.39	\$72.90	\$76.65	\$3.75	5.1%
Operating Costs	N/A	\$45,596,777	\$48,137,535	\$2,540,758	5.6%
RVH	N/A	625,508	628,052	2,545	0.4%

In FY 2012, ACCESS met the annual budget target for the cost per RVH of no more than \$89.39 per RVH with a rate of \$76.65. This rate represents an increase of 5.1 percent from FY 2011 rate of \$72.90. The increase in demand-response taxi use is yielding cost efficiencies.

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Appendix B

ACCESS Customer Satisfaction Survey¹

OCTA conducts a periodic customer satisfaction survey to evaluate customer opinions and perceptions regarding ACCESS service in an effort to understand the special needs of its customers and to deliver quality service. A prior customer satisfaction survey was conducted in 2008.

In 2011, OCTA mailed out 13,578 surveys and 2,732 completed surveys were returned (a 20% response rate). Rea and Parker Research of San Diego conducted the survey, and tabulated data and analyzed the results of the ACCESS survey. The survey results are summarized below:

Satisfaction with ACCESS service

- Overall, in 2011, 88 percent of ACCESS users were either very satisfied (62 percent) or somewhat satisfied (26 percent) with ACCESS service. In 2008, the level of overall satisfaction was at 85 percent. Other areas with high levels of satisfaction include cleanliness of the bus, safety on the bus, and bus driver courtesy. Compared to 2008, in 2011, the satisfaction levels in these three areas increased by 12 percent, 11.5 percent, and 11 percent, respectively.
- In 2011, 94 percent of ACCESS customers felt that ACCESS service is the same (57 percent) or better (37 percent) than it was 12 months ago. While in 2008, 90 percent of ACCESS customers had the same opinion.
- In 2011, ACCESS users were not satisfied with travel time, on-time, and the 30-minute on-time pick-up window performance of ACCESS service, even though these service characteristics showed an improvement in 2011 compared to 2008. The improvement levels in these three areas were 9 percent, 15 percent, and 12.4 percent, respectively.

ACCESS Usage Characteristics

- Forty nine percent of ACCESS customers had been ACCESS customers for more than four years.
- Frequency usage of ACCESS service varied. Forty seven percent used the service 1-7 days per week while 31 percent used the service at least one time per month. The most frequent trips were for work (3 trips per week) and school (2.4 trips per week). This was similar to the high usage found in 2008 survey except in at least once per month usage category, in 2011, it increased to 31 percent from 27 percent in 2008.

¹ Source: OCTA 2011 ACCESS Customer Satisfaction Survey Report (November 2011)

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- Trip purpose varied with survey respondents. Seventy five percent used ACCESS service for health/doctor appointments, followed by social/recreational (37 percent) and personal business/errands (36 percent). More women than men used ACCESS service for shopping, social, recreational, and personal business trips.
- The percentage of relatively new users of ACCESS (using the service for less than one year) increased to 15 percent in 2011 from 8 percent in 2008.
- A large share of ACCESS survey respondents was female-69 percent female and 31 percent male. This is consistent with data in the overall ACCESS customer data base where 62 percent are female. There are also many seniors using ACCESS service with 70 percent age 60 years or older.
- A majority (48 percent) of survey respondents would not book ACCESS reservations on line if this service were available. Only 28 percent of respondents favored this option and 24 percent were not sure. Men (38 percent) and younger customers (51 percent in the age group 44 years and younger vs. 25 percent in the age group 45 years and older) were more likely to book reservations on line.

ACCESS Eligibility Process:

- ACCESS customers were very satisfied with the functional assessment process, including the OCTA eligibility staff, in-person assessment staff, in-person assessment evaluation tests, and in-person assessment facility. Compared to 2008, satisfaction levels for each category of the eligibility process increased as follows: 10.8 percent (OCTA eligibility staff), 11.3 percent (in-person assessment staff), 10.4 percent (in-person assessment evaluation tests), and 8.6 percent (in-person assessment facility).

Taxis for ACCESS trips

- There was an increase in the use of Same-Day Taxi Service since 2008 - from 23 percent to 32 percent in 2011. Among the 32 percent, who had used the Same-Day taxi service, frequency of use was not high with 53 percent using the service only a few times per year. Among the 68 percent of ACCESS customers who had not used the Same-Day taxi service, 57 percent were not aware that the service existed.
- There was considerable satisfaction with the Same-Day Taxi Service among the 32 percent those who have used this service. Eighty three percent of these users were very or somewhat satisfied with this service. This is an improvement over the 70 percent level reported in 2008.
- Same-Day taxi customers were also highly satisfied with travel time, safety on taxi trip, driver courtesy, on-time performance, and cleanliness characteristics of taxi service.

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Reduced Fare Program

- Seventy five percent of ACCESS customers were not aware of this program, which enables them to use fixed-route bus service for 25 cents per trip.
- Twenty percent of ACCESS customers had used both the fixed-route and ACCESS services. Among the 80 percent of ACCESS customers who had not used this service, 66 percent would not consider the regular, fixed-route travel training even if such training could enable them to ride fixed-route buses at a reduced fare of 25 cents per trip. Remaining 34 percent were willing to participate in this training. Only 3,500 Reduced fare IDs had been issued to ACCESS customers.

Registrar of Voters Earns High Marks for 2012 Election



2012-2013

Registrar of Voters Earns High Marks for 2012 Election

SUMMARY

The November 6, 2012, General Election was Orange County's third presidential election using electronic voting equipment.

The Registrar of Voters and his permanent staff, temporary employees and volunteers conducted the 2012 General Election in an efficient, effective and cost-conscious manner.

The 2012 – 2013 Orange County Grand Jury is pleased to affirm its confidence in the integrity of Orange County's voting system and procedures.

REASON FOR STUDY

During the past eight years the Grand Jury has released four comprehensive reports on the election process in Orange County. Since the 2012 General Election was anticipated to be very close, the 2012 – 2013 Orange County Grand Jury decided to again review the election process.

Since a national increase in voter fraud and voter identification have been in the news and subject of judicial action lately, the Grand Jury decided to analyze potential and/or existing voter fraud issues in Orange County.

Since vote-by-mail has become so popular (more voters used the vote-by-mail process to cast their vote than were cast by voting at the polls during the 2010 General Election) The Grand Jury wanted to determine if 'vote by mail' is secure, as compared to the traditional 'vote at the polls' process.

METHOD OF INVESTIGATION

After an orientation by the Registrar of Voters at the their facility in Santa Ana, the Grand Jury made the decision to divide the study into three phases and to use as many members of the Grand Jury as wished to participate. The three phases were:

- Pre-Election Process
- Election Day Procedures
- Post-Election Process

Grand Jurors members interviewed the Registrar of Voters and various members of his staff. Information was obtained through on-site interviews, review of requested documents, and individual research on the Internet. Publications obtained from the Registrar's office included the following:

- Election Survey Report November 6, 2012 Presidential General Election

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- Voter Registration Accuracy and Voter List Maintenance
- Polling Place Operations Manual (June 5, 2012 Primary Election)
- Survey Results November 2, 2010 Statewide General Election

The Grand Jury reviewed the online training course given to prospective polling place workers.

The Grand Jury opted to include topics more contemporary than had been included in prior reports due to the concerns expressed in the media about voter fraud, voter identification, vote-by-mail, and online registration.

The Grand Jury also sought out stakeholders such as Orange County's major political parties and the League of Women Voters for their input and concerns.

Hurricane Sandy's effect on East Coast voters presented a prime catalyst for examining Orange County's preparedness in the event of a major disaster at or near the time of an election. The Grand Jury visited the County's Emergency Operations Center and examined the Registrar's information technology systems.

While due diligence was used to review all election related data and processes, not all of these data or those processes will be included in this study, except where fault was found with the existing policies and/or procedures.

On Election Day, the majority of the members of the Grand Jury visited multiple polling places to observe the progress of the election from the opening of the polls, mid-day voting, end of day poll closing, the delivery of the ballots to the Registrar of Voters' facility and the tabulation of votes. Observations were subsequently documented and shared with the staff of the Registrar of Voters as part of a routine post-election debriefing.¹

BACKGROUND AND FACTS

The Grand Jury decided to monitor and audit the 2012 General Election for the following reasons:

- Traditionally, the Grand Jury has published a report regarding the national election process.
- The presidential race was drawing much interest and promised to be a close contest.
- There had been substantial media coverage regarding voter identification and possible voter fraud.

¹ Grand Jury Election Day Checklist and Report Forms

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- The State of California started a new online registration system prior to the election and the Grand Jury wanted to assure Orange County Residents that the Registrar of Voters was ready for the changes.
- Hurricane Sandy raised concerns about Orange County's ability to respond in the event a critical disaster occurred here.

The study began shortly after the Registrar of Voters' (ROV) orientation to the 2012 – 2013 Orange County Grand Jury at the ROV office on Grand Avenue. The designated Grand Jury members requested additional information for their review.

Once documentation was reviewed, the study was expanded to include system security, possible voter fraud, the vote-by-mail process, the new online voter registration process, and outreach to stakeholders.

Election Statistics

The following will give the reader a sense of the 2012 national election in Orange County:²

1. More vote-by-mail ballots were received than were cast at polling places in Orange County during a Presidential election.
2. For the first time, more than 50 percent of vote-by-mail ballots were from permanent vote-by-mail voters.
3. More vote-by-mail ballots (112,000) were dropped off at polling places than ever before.
4. All sample ballots were mailed on the first day legally allowed.
5. Although the legal period to certify election results is much longer, the Registrar of Voters was able to certify after just 14 days.

The increase in vote-by-mail had the biggest impact on this election than any other statistical factor. There was a 10.5 percent increase of vote-by-mail ballots counted in 2012 (575,843) compared to 2008 (521,348).

Vote-by-mail ballots represented 34.3 percent of all registered voters. Vote-by-mail ballots were 50.8 percent of ballots cast. 72.9 percent of vote-by-mail ballots mailed to voters were cast.

Polling place ballots cast decreased by 11.6 percent from 2008 (624,181) to 2012 (552,018) due to the increase in vote-by-mail participation.

² Memorandum from O.C. Registrar dated December 17, 2012

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For more information about Orange County's election process the reader is encouraged to visit the Registrar of Voters website at www.ocvote.com. This outstanding website covers the entire voting process. Voters can register to vote, view newsletters showing various phases of the election process, read newsletters that update volunteers on the election, and see many charts of almost any statistic on registrations and elections any user would want to see.

Disaster Preparedness

Hurricane Sandy was a super storm that devastated parts of the Caribbean, Mid-Atlantic and New England during the latter part of October 2012. The storm affected 24 U.S. states that included the entire eastern seaboard. Particularly hard hit were the States of New Jersey and New York. Much of the devastation resulted from wind damage, flooding and loss of electrical power. In terms of economic loss, the storm is estimated to have caused over \$71.4 billion dollars in damage.³

Although governors in those states issued disaster declarations in advance of the storm that struck in earnest on October 29th, election officials were faced with a daunting task: the presidential election was one week away. Officials scrambled to move polling places to locations with electrical power, curtailed early voting, closed registration offices, and increased the use of provisional ballots.^{4,5}

NEW YORK — Power generators are being marshaled, polling locations moved and voting machines hurriedly put into place as officials prepare to hold an national election in storm-ravaged sections of New York and New Jersey barely a week after Superstorm Sandy.

--Huffington Post article
November 4, 2012

Scholars with the Voting Technology Project at the California Technical Institute issued a post 2012 election update and recommended that "...local election officials must study the disruptions caused by Hurricane Sandy, examine how election officials in the affected states reacted to those disruptions, and develop contingency plans for dealing with similar emergencies in the future."⁶

The Grand Jury wanted to see if Orange County officials were prepared for an emergency similar in scope to Hurricane Sandy such as a major earthquake, wildfire or Santa Ana Wind event. The Grand Jury spoke with officials at the Registrar of Voters' Office and the County's Emergency Operations Center. Relevant plans and documents were then examined.

³ Hurricane Sandy article, retrieved 2/8/13 from http://en.wikipedia.org/wiki/Hurricane_Sandy

⁴ Fabian, J. and Deruy, E., ABC News dated 10/30/12, retrieved 2/8/13 from http://abcnews.go.com/ABC_Univision/Politics/hurricane-sandy-push-back-election-day/story?id=17598371&page=2

⁵ Halbfinger, D., Kaplan, T. and Ruderman, W. The New York Times dated 11/5/12, retrieved 2/8/13 from

http://www.nytimes.com/2012/11/06/nyregion/after-hurricane-sandy-efforts-to-help-the-displaced-vote.html?pagewanted=all&_r=0

⁶ Alvarez, R. et al, (CalTech, MIT & University of Utah) retrieved 2/13/13, from <http://vote.caltech.edu/content/voting-what-has-changed-what-hasnt-what-needs-improvement>

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The Orange County Registrar of Voters has a plan titled, “Business Continuity Plan for Business Processes.” The 150-page document includes checklists, tables, scenarios and a resource guide that provide direction to maintain stability in the event of disaster or other unusual circumstance.⁷ It was refreshing for the Grand Jury to see that the plan was created and in place prior to events on the East Coast. Review of the Registrar of Voters disaster preparedness procedures showed that they are prepared for most anticipated emergencies; however, a disaster of the size of Hurricane Sandy would probably be more than the Registrar of Voters’ staff could handle alone and would have to be coordinated through the County’s Emergency Operations Center (EOC).

The Grand Jury toured the EOC and studied emergency response plans and protocols for dealing with major disasters most likely to strike Orange County. The EOC coordinates emergency response from law enforcement, fire, health services, public works and other disciplines as needed.⁸

During the Grand Jury’s tour of the EOC, they were shown documentation relating to procedures for dealing with major disasters and the required coordination that takes place to timely address concerns, as they arise. The obvious major disaster that could occur in Orange County is “the big one.” A major earthquake that disrupts the distribution of electrical power throughout Orange County preceding an election could have devastating effects. While the election could be conducted on paper instead of electronically, it is not known whether sufficient paper ballots would be available for all voters able to make it to the polls. Presently, paper ballots are distributed to polling places to accommodate a percentage of the voting public. The number of ballots distributed is based on historical need.⁹

Voter Fraud

Earl K. Long was a three-time governor of the State of Louisiana.¹⁰ Quotes attributed to him include: “*I can make them voting machines sing “Home Sweet Home”*”¹¹ and “*When I die, I want to be buried in St. Martin’s Parish so I can remain politically active.*”¹² While amusing, these quotes underscore widespread allegations and concerns about “voter fraud.” The Grand Jury researched the topic, finding that actual voter fraud is greatly exaggerated.

DENVER (AP) — State officials in key presidential battleground states have found only a tiny fraction of the illegal voters they initially suspected existed. Searches in Colorado and Florida have yielded numbers that amount to less than one-tenth of 1 percent of all registered voters in either state.

-- [Ivan Moreno](#) Associated Press 9/24/12

⁷ The business continuity plan covers topics such as absentee ballot processing, ballot generation, candidate filing, voter supply distribution, media relations, and poll site support and information technology systems.

⁹ Per Registrar of Voters

¹⁰ Retrieved 2/8/13, from http://en.wikipedia.org/wiki/Earl_Long

¹¹ Quotation retrieved 2/8/13 from http://www.brainyquote.com/quotes/authors/e/earl_long.html#5wOAvSrtMpSmoOO6.99

¹² Hartford Courant, retrieved 2/8/13 from http://articles.courant.com/2000-11-14/features/0011140283_1_secretaries-touch-football-rose-kennedy

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While the Registrar of Voters felt that voter fraud issues were minor (the few cases of possible voter fraud would not have changed the election result) due to the many checks and cross checks with both internal and external data, the Grand Jury did much research in this area. A report titled *The Truth About Voter Fraud* by Justin Levitt published in 2007 by the Brennan Center for Justice at New York University of Law provided much good information and was consistently referenced by other reports on the subject.

The report stated that many issues are often combined under the umbrella of “voter fraud.” These issues include irregularities such as: errors in the poll books, errors in registration records, unintentional dual registrations, and issues dealing with criminal and death records.

The most common type of voter irregularity involved vote-by-mail. In some instances the voter forgot they had mailed in the vote-by-mail ballot and went to their polling place with the intension of voting. Those common errors are easily caught in Orange County because of the cross-checking of voter lists that follows after the election.

Actual “voter fraud” perpetuated by “individual voters is a singularly foolish and ineffective way to attempt to win an election.”¹³ Each act of voter fraud in connection with a federal election risks five years in prison and a \$10,000 fine, in addition to any state penalties.¹⁴ Actual voter fraud large enough to affect the outcome of an election requires a significant degree of conspiracy and organization. The ability to keep secret such a large-scale operation is directly affected by the number of people who know about it. Common sense dictates that such a criminal enterprise would come to the attention of federal and local authorities.

Common examples of actual voter fraud consist of faulty voter registration documents, registration collectors completing voter registration documents without the registrant’s permission, and destruction of voter registration documents by registration collectors if the party preference was other than that of the party paying for the registration collection. Some parties were prosecuted.

Other types of voter fraud involve vote-by-mail. In this instance, the voter receives a vote-by-mail ballot; however, dies before the election. The vote-by-mail ballot may be mailed early or the survivors of the vote-by-mail ballot may wish to comply with the voter’s wishes and submit the vote-by-mail ballot after the voter’s death, but before the election. Orange County’s post-election processes also easily catch this type of vote fraud as the voter rolls are checked against various databases to ensure that only living qualified voters voted.

Online Registration

¹³ Levitt, J. *The Truth About Voter Fraud*, Brennan Center for Justice New York University School of Law (New York) p. 7

¹⁴ 42 U.S.C. §1973(i) – Prohibited Acts retrieved 2/8/13, from <http://www.law.cornell.edu/uscode/text/42/1973i>

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The State of California initiated its online registration system on September 19, 2012. The Registrar of Voters was ready for the new process and integrated it into their existing processes without incident. Voter registration deadline was October 22, 2012. It is believed that the new online registration system allowed even more people to register for the election than had been expected. A total of 1.8 million were registered for this election compared to 1.6 million in 2008. That was a 4.7 percent increase, part of which was attributed to on-line registration.

Security

The Registrar of Voters (ROV) provides a superior level of security for all types of voter information and ballots. From the ballot box to the counting room, the ROV strives to provide the highest level of security and protection for electronic and absentee ballots. For security reasons this report will not describe the specific security measures employed by the ROV to protect voter and ballot integrity. Overall the security measures deployed in the ROV ballot counting room are sufficient to safeguard vital voting processes and information.

The County's entire electronic voting system is stand-alone, meaning it is not dependent on a connection to the Internet or other network. Likewise, it has no wireless connectivity. The Secretary of State provides a copy of the tabulation software used with each specific election. The Registrar of Voters can reset passwords and can reload backed-up data files. Only services explicitly required by the proprietary computer systems are enabled.

The Judges Booth Controllers, similar to electronic sealed ballot **boxes**, have tamper-resistant tape applied to their connectors. Serialized seals, cables and locks are used throughout the process.

There is extensive video monitoring and controlled access to the Registrar of Voters' building entrances and to all sensitive areas within the building.

Armed Sheriff's Department deputies accompany the ballots in transit and guard them at the Registrar of Voters' site on Election Day.

Electronic Voting Equipment

Orange County first utilized electronic voting equipment for the March 2004 primary election. During the intervening years, the public has become accustomed to voting electronically. Vote-by-mail offers the convenience of not having to go to the polls on Election Day but many voters prefer to cast their vote in person. Even as vote-by-mail continues to increase, electronic voting equipment will be required for years.

Orange County needs to plan for the replacement of their existing electronic voting equipment. While the equipment is only eight years old, it carried only a three-

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year warranty. Since technology changes so quickly, it may become more cost effective to replace the existing equipment with newer technology than to maintain it.

Accuracy

An election is one of the human endeavors where “close” isn’t good enough. Each step of the process requires accuracy to guarantee a fair outcome. Starting with the processing of candidates, to the registration of voters, to the preparation of sample ballots, to the administration of the election, to the counting of the ballots, and finally to the certification of the election, each step depends on accurate processing. State law requires that the voting system in each county be tested prior to each election. The Orange County Registrar’s office conducted the “Logic and Accuracy Test” on October 30, 2012, which resulted in a 100% accuracy rating. The test was open to the public.¹⁵ The Grand Jury did not find any evidence of inaccuracies in the processes observed during this election.

Vote by Mail

A New York Times article raised concerns about fraud with the increase of absentee / vote-by-mail balloting. With many states accelerating the use of vote-by-mail balloting, uncounted votes and potential for fraud appear to be on the rise.

*On the most basic level, absentee voting replaces the oversight that exists at polling places with something akin to an honor system.*¹⁶

The Orange County Register published an article, “Trouble at the Ballot Box” citing a Pew Charitable Trusts study¹⁷ that examined the 2010 election results nationwide. The study found that both California and New York finished just ahead of Mississippi for last place in the nation based on “more than 15 criteria, including wait times, lost votes and problems with absentee and provisional ballots...”¹⁸ Californians who voted by mail in 2010 suffered a 0.7% rejection rate in that election.¹⁹ The registrar of voters for a large California county said that the rejection rate is “partly a byproduct of the popularity of voting by mail in California and partly a function of how the state defines rejected ballots.”²⁰ As an example, State law requires the rejection of ballots requested by voters that were returned by the U.S. Post Office as, “Undeliverable” and ballots in which the voter did not sign his/her name.²¹ Even with the noted constraints, according to the California Secretary of State’s Office, Orange County had a rejection

¹⁵ O.C. Registrar of Voters website, retrieved 2/11/13 from <http://www.ocvote.com/media/pressrelease/?id=486>

¹⁶ Liptak, A., New York Times article dated 10/6/12. Retrieved 2/11/13 from <http://www.nytimes.com/2012/10/07/us/politics/as-more-vote-by-mail-faulty-ballots-could-impact-elections.html?pagewanted=all&r=0>

¹⁷ PEW Charitable Trusts Study: The Elections Performance Index, retrieved 2/11/13 from <http://www.pewstates.org/projects/election-initiatives-328601>

¹⁸ O.C. Register Article, retrieved 2/11/13 from <http://www.ocregister.com/news/ballot-495267-trouble-focus.html>

¹⁹ ibid

²⁰ ibid

²¹ ibid

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rate of 0.54%²² of its vote by mail ballots in the November election – a rate lower than the state average of 1.02%.

Elections Code §3000-3024 governs voting by mail in California.²³ The Secretary of State issues a document titled, *Uniform Vote Counting Standards*²⁴, setting forth guidelines with respect to the counting of cast ballots. Here are the reasons why vote by mail ballots were rejected:

1. The voter did not sign vote-by-mail ballot envelope.
2. The vote-by-mail ballot envelope was signed using power of attorney.
3. The vote-by-mail ballot envelope was received after the close of the polls on Election Day.
4. The vote-by-mail ballot envelope was returned by a third party who is not eligible or authorized to return the voted ballot on behalf of the absent voter.
5. The voter, who was not a special absentee voter,²⁵ transmits his or her voted ballot by facsimile.
6. The voter's signature on the vote-by-mail ballot envelope, when compared to the signature on the affidavit of registration, did not appear to be the same, including:
 - a. The voter used a mark on the vote-by-mail envelope that is not properly witnessed, and the affidavit of registration has a signature of the voter.
 - b. The voter printed his or her name on the signature portion of the vote-by-mail ballot envelope but had a written signature on the signature portion of the affidavit of registration.
7. The vote-by-mail ballot return envelope contained two or more voted vote-by-mail ballots but there were less than an equal number of distinct signatures on the vote-by-mail envelope.

The flaws of absentee voting raise questions about the most elementary promises of democracy. "The right to have one's vote counted is as important as the act of voting itself,"

--Justice Paul H. Anderson of the Minnesota Supreme Court wrote while considering disputed absentee ballots in the close 2008 Senate election.

The Caltech/MIT Voting Technology Project²⁶ was begun after the 2000 presidential election to provide scientific analysis regarding voting technology and election administration. In their report released on October 18, 2012, following recommendations were made regarding absentee and early voting:

²² California Secretary of State's Website, retrieved 2/13/13 from <http://www.sos.ca.gov/elections/elections.m.htm> Orange County did not count 3,159 vote-by-mail ballots of 579,002 returned.

²³ Election Code retrieved 2/13/13, from www.leginfo.ca.gov

²⁴ Bowen, D., California Secretary of State publication *Uniform Vote Counting Standards* retrieved 2/13/13 from <http://www.sos.ca.gov/voting-systems/uniform-vote-count.pdf>

²⁵ i.e. Military personnel stationed overseas

²⁶ Alvarez, R. et al, (CalTech, MIT & University of Utah) retrieved 2/13/13, from <http://vote.caltech.edu/content/voting-what-has-changed-what-hasnt-what-needs-improvement>

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- *Discourage the continued rise of no-excuse absentee balloting and resist pressures to expand to all-mail elections. Similarly, discourage the use of Internet voting until the time when accurate auditing can be ensured and the substantial risks entailed by voting over the Internet can be sufficiently mitigated.*
- *Require the states publish election returns in such a way that allows the calculation of the residual vote rate by voting mode.*
- *Continue research into new methods to get usable ballots to military and overseas civilian voters securely, accurately, and rapidly, and to ensure their secure return in time to be counted.*

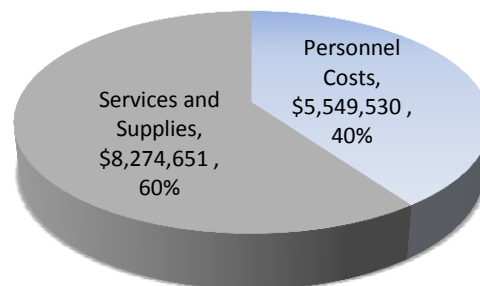
While the report might cause alarm to the average voter, the vote-by-mail process in Orange County has been very successful with a very high rate of counted ballots. The use of automation allows for quick processing of the ballots. Error-checking software identifies problem ballots, which are quickly identified. If possible, the staff can resolve the problems immediately or they can contact the voter for assistance in resolving the issues. The biggest issue with the vote-by-mail process is that voters make errors, which causes a rejection rate of vote-by-mail ballots to be greater than the rejection of ballots cast at polling places. The challenge continues to be how to make the vote-by-mail process convenient and easy for the voter while at the same time secure.

Cost Efficiency

The Grand Jury examined the Registrar of Voters budget (both revenue and expenditures) and cost saving measures taken to gauge the department's stewardship of public funds. Major personnel expenditures included salaries, extra help, overtime, pensions and insurance. Major services and supply expenditures included communications, reproduction costs, postage, professional services, equipment rental, space rental and equipment.

Actual Expenditures

\$13,824,181



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The Registrar’s office offset costs 37.66% by earning \$5,206,122 in revenue. Major sources of revenue included service to cities, state mandates and election consolidations.²⁷

Orange County realized additional savings in the amount of \$2,725,293 beginning with the 2008 fiscal year. This was accomplished in part by reviewing expenditures, “strategically deactivating” mobile phones, instituting a “pre-approval” policy regarding overtime usage, removing batteries from voting machines, personnel reductions, and renegotiation of contracts.²⁸

Most interesting is the Cost per Voter comparison between Orange County and four other counties in California. More than any other financial statistic, this comparison easily illustrates how well the Registrar’s Office is managing its fiscal responsibilities.²⁹

COST PER VOTER	COUNTY				
	Orange	Los Angeles	San Diego	Contra Costa	Sacramento
Overall	\$5.54	\$7.19	\$7.96	\$8.78	\$5.86
Vote-by-Mail	\$1.30	\$4.36	\$4.28	\$3.18	\$3.23
Polling Place	\$2.77	\$8.10	\$13.01	\$6.95	Unknown

Consistency

For an election to be fair, consistency is required at all stages of the process. The candidates insist on their applications being processed in a similar manner. The voters insist on a consistent experience no matter where, or how, they cast their vote. The State of California insists that all votes be counted in a consistent manner.

The Registrar of Voters ensures consistency by utilizing written training material, written documentation, checklists for essential critical tasks, and guarantees consistency by monitoring every step of each process.

A detailed de-briefing after the election ensures that whatever issues need to be addressed before the next election are documented and resolved.

Sustainability of Processes

Based on the Grand Jury’s observations, the primary reasons for sustainability of the election process were: (1) efficient management that concentrates on process details, (2) good documentation regarding training and the **processes**, (3) good detailed schedules that ensure all of the functions are performed at the appropriate time, and (4) a thorough de-briefing process following the election so that any concerns can be documented and addressed before the next election.

²⁷ FY 2010/11 Budget Data obtained from the Registrar of Voters

²⁸ Kelley, N. Memorandum to the O.C. Grand Jury dated 8/15/12

²⁹ Kelley, N. Memorandum to the O.C. Grand Jury dated 8/22/13

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Management takes seriously the challenge of making sure the details of the various functions are executed well. Very importantly, management's standing with staff helps ensure staff will respond adequately.

Written documentation observed included poll worker training manuals, process documentation, and process checklists. The documentation appeared to be accurate and up-to-date.

The master schedule shared with the Grand Jury was very detailed and in proper sequence to ensure functions were performed in the proper order.

The most important function observed was the post-election de-briefing. For this election, the de-briefing took three days and generated over 200 action items.³⁰ The most impressive part of the de-briefing was the extent to which participants evaluated issues and came up recommendations to improve the process.

Examples of the types of action items identified during this election's de-briefing sessions are show below:

Item 34: Explore reserving large schoolrooms to avoid assignment to smaller rooms for the election.

This highlighted the issue that schools frequently change the allocation of Election Day rooms due to unknown school priorities.

Item 42: Explore other options in sending/receiving ballots via email to Military and Overseas voters and seek legislation to assist process.

This highlighted the issue that exchanges between the Registrar of Voters' staff and military personnel and overseas voters is often very time consuming and may cause delays in the eventual receipt of ballots. In California, completed ballots, presently, must be received no later than the closing of polling places and cannot be received via email.

Item 98: Look into the type of masking tape provided to polling places with the voting supplies to avoid any paint damage to polling place walls.

This highlighted the issue that the placing of required voting signs on walls could sometimes cause damage to the paint on the walls. Although this may seem a trivial point, it highlights the attention to detail discussed at the debriefing.

Space Requirements

³⁰ 200 action items doesn't mean that there were many problems. It simply attests to the level of detail addressed at every level and stage of the election process.

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The Registrar of Voters' office space requirements continue to expand as new equipment is purchased and integrated into the existing voting system. During the de-briefing process, staff identified requirements for new equipment. If the Registrar of Voters continues to add and or replace existing equipment, there will be a need for more office space to continue efficient election operations.

Temporary office space is rented for the distribution of the election supply packets to the polling place workers. This space is only needed shortly before the election and can be released once all of the election supply packets have been distributed. Availability of rentals for periods of no more than two weeks has proven difficult.

The entire parking lot at the Registrar of Voters' facility is utilized for almost two weeks prior to an election to provide an area for training and drive-thru service for the public to complete the registration process and turn-in vote-by-mail ballots. While use of the parking lot is convenient for Registrar of Voters' staff, it does create issues for the other tenants operating at the site, as they are required to park off-site.

Succession Development Planning

The election processes work very well; however, the Grand Jury had concerns regarding the possible replacement of critical management personnel. While the staff is committed to providing good service, it was not evident that this level of service would continue under different top management. The Grand Jury is concerned that the Registrar is such a dynamic leader that any future replacement may have an insurmountable task to fill some very big shoes. It appears to the Grand Jury that the Registrar has fostered a working environment where employees are empowered with a sense that their contributions are valued and their input is accepted with serious regard.

Stakeholder Outreach

The Grand Jury contacted all of the major Orange County political parties and the League of Women Voters early in the study process. Only the League of Women Voters expressed a desire to meet with the Grand Jury. Representatives from that organization said they were very satisfied with the customer service provided by the Registrar of Voters Office. Employees of the Registrar were described as, "knowledgeable, courteous and helpful." (Based on first-hand observation, the Grand Jury concurs with the League's assessment of county employees working for the Registrar) The Registrar himself was commended for being responsive to their needs as a voter advocacy group in Orange County.³¹

Military Voters

³¹ Grand Jury interview conducted 9/28/2012

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Election Code §3101-3123 regulates military and overseas voters' ability to register and vote in federal, state and local elections.³² Presently, Californians serving in the military overseas can register to vote as a special absentee voter. They can request the special status and receive ballots via e-mail but must return them to their respective registrars via regular postage. Given the rigor of military service – particularly those serving in combat zones, the requirement to print an electronic ballot, complete it and place it in the mail could be problematic and disenfranchise some of our best and brightest citizens.

As a military voter, you may be eligible to return your voted ballot by fax or email if you are an active member of the army, navy, marine corps, merchant marine, coast guard, air force, or Iowa National Guard and are outside the U.S. or any of its territories

The State of Connecticut's Office of Legislative Research produced a 2013 report that identified 28 states that allow some or all of their military and overseas voters to return voted ballots electronically. Twenty of the states allow the return of voted ballots via e-mail.³³ California legislation to allow for voting using the referenced methods is indeed worth exploring.

FINDINGS

In accordance with California Penal Code Sections §933 and §933.05, the 2012 - 2013 Grand Jury requests responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of the Registrar of Voters, the County Executive Officer, and the County's Emergency Manager in Orange County, the 2012 - 2013 Orange County Grand Jury has arrived at eleven principal findings as follows:

- F1 The County's electronic voting system coupled with the Registrar's system of collecting, processing and counting ballots is very proficient both in terms of efficiency and cost effectiveness.
- F2 The Grand Jury has confidence in the security of ballot processing and the accuracy of election results.
- F3 The Registrar fosters a climate of technological innovation, teamwork, efficiency, purpose and introspection that results in employees that appear to be highly competent, cheerful and driven to providing outstanding customer service.

³² Election Code retrieved 2/13/13, from www.leginfo.ca.gov

³³ Adams, T., Legislative Analyst II, OLR Report, *Electronic Ballot Submission by Military and Overseas Voters (1/8/13)* Connecticut General Assembly, retrieved 2/13/13 from <http://www.cga.ct.gov/2013/rpt/2013-R-0022.htm>

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- F4 **The Registrar of Voters Office is a model for other County Departments and Agencies to emulate.**
- F5 The Registrar of Voters is supported by a large number of volunteer poll workers and election-day help that contribute greatly to the efficiency of Election Day operations.
- F6 There was no evidence of widespread or organized voter fraud.
- F7 Voting by Mail increased in popularity among the Orange County electorate, but due to voter error, casting a ballot in this manner is more likely to be disqualified than any other method of voting; however, such possibility of rejection is still only .54%.
- F8 The Registrar's Office has a plan to maintain operations in the event of natural or man-made disaster.
- F9 Orange County residents serving in the U.S. Military abroad cannot return their ballots to the Registrar of Voters via e-mail per state law.
- F10 The existing voting system meets the current requirements of the Registrar of Voters; however, new voting systems should be explored to determine if it is time to upgrade.
- F11 The existing office and warehouse space is overcrowded.

RECOMMENDATIONS

In accordance with California Penal Code Sections §933 and §933.05, the 2012 - 2013 Grand Jury requests responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of the Registrar of Voters, the County Executive Officer, and the County's Emergency Manager in Orange County, the 2012 - 2013 Orange County Grand Jury makes the following eight recommendations.

- R1 The Registrar of Voters shall determine the projected lifespan of its electronic voting equipment and report his findings to the County Executive Officer of the County. (F1, F2, F3, F5, F10)
- R2 The Registrar of Voters shall determine office and warehouse space needs for the future and work with the County Executive Officer to fulfill their office space needs for the next decade. (F1)

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- R3 The Registrar of Voters shall continue efforts through training, outreach and design to minimize the amount of vote-by-mail ballots that must be rejected³⁴ due to voter error. (F7)
- R4 The Registrar of Voters shall continue vigilance in detecting voter fraud and other irregularities and use cutting edge technology to assist Orange County in this effort. (F6)
- R5 The Registrar of Voters will partner with and lobby within the State of California to identify appropriate safeguards and recommend legislative changes that allow Californians serving in the military to return completed ballots electronically to their respective registrars including Orange County. (F9)
- R6 The County Executive Officer shall ensure the viability of the electronic voting system by earmarking funds for the procurement of replacement equipment, as needed over time. (F1, F2, F3, F5, F10)
- R7 The County Executive Officer shall determine how the Registrar has developed a motivated, efficient and customer-friendly workforce and use those principles in training of other County Departments and Agencies. (F3)
- R8 The County's Emergency Manager shall plan and host a table top emergency management exercise that involves an event likely to strike Orange County (earthquake, wildfire, power grid failure, Santa Ana wind event) in the days prior to a general election. (F8)

REQUIREMENTS AND INSTRUCTIONS:

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:

³⁴ As required by California state law

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- (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 aspects of the findings or recommendations affecting his or her agency or department.

Responses Requested:

The Registrar of Voters: F1, F2, F3, F5, F6, F7, F9, F10, F11

The County Executive Officer: F1, F2, F3, F4, F5, F10

The County's Emergency Manager: F8

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Responses Requested:

The Registrar of Voters: R1, R2, R3, R4, R5.

The County Executive Officer: R5, R6, R7

The County's Emergency Manager: R8

COMMENDATION

Orange County grand juries have commended the Registrar of Voters office on several prior occasions citing management and staff for exemplary performance. The 2012-13 Orange County Grand Jury is pleased to commend the Registrar and his employees again for a "job well done" during the November election.



700 Civic Center Drive West
Santa Ana, CA, 92701
www.ocgrandjury.org