



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA

TODD SPITZER

August 11, 2023

The Honorable Maria D. Hernandez
Orange County Superior Court
Central Justice Center
700 Civic Center Drive West
Santa Ana, CA 92701

Re: OC District Attorney Response to 2022-2023 Orange County Grand Jury Report
"RUSSIAN ROULETTE: FENTANYL IN ORANGE COUNTY"

Dear Judge Hernandez:

Please find enclosed a copy of the Orange County District Attorney's response to Findings F1-F10, and Recommendations R1-R3 of the 2022-2023 Orange County Grand Jury Report, "RUSSIAN ROULETTE: FENTANYL IN ORANGE COUNTY." Thank you.

Sincerely,

Todd Spitzer
District Attorney-Public Administrator

Enclosure

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<http://orangecountyda.org/>

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MEMO

OFFICE OF THE DISTRICT ATTORNEY
AND PUBLIC ADMINISTRATOR
TODD SPITZER



August 11, 2023

TO: Honorable Maria Hernandez

FROM: Todd Spitzer, District Attorney

SUBJECT: Orange County District Attorney Response to 2022-2023 Orange County Grand Jury Report "*Russian Roulette: Fentanyl in Orange County.*"

SUMMARY RESPONSE STATEMENT

On June 21, 2023, the Orange County Grand Jury (OCGJ) released a report, "*Russian Roulette: Fentanyl in Orange County*" (hereinafter referred to as "report".) The report directed a response from the Orange County District Attorney's Office (OCDA) on ten findings and three recommendations that are included below.

During the 2022-2023 Grand Jury term, the OCGJ requested information from the OCDA in connection with this report. The OCGJ also asked to meet with members of OCDA. The OCDA fully and completely cooperated with the OCGJ, and always promptly provided the OCGJ with all the requested information. Throughout the entire framework of the OCDA's interaction with the OCGJ and response herein, it should be clear that the OCDA is committed to following the rule of law, upholding the highest professional ethics, prioritizing public safety, and pursuing justice in every case.

As part of the OCGJ report, OCDA was asked to respond to Findings F1-F10 and Recommendations R1-R3.

FINDINGS AND RESPONSES

Finding F1

"Illicit fentanyl is sold on the streets and through social media marketed as legitimate pharmaceuticals, or as other drugs laced with fentanyl, or sold as straight fentanyl, leading to exponentially increasing fentanyl addiction and deaths in Orange County."

Response to Finding F1: Agree

Finding F2

“Illicit fentanyl is a pervasive problem in Orange County.”

Response to Finding F2: Agree

Finding F3

“Drug dealers use social media to sell fentanyl and other drugs. Social media business models impede law enforcement investigations.”

Response to Finding F3: Agree

Finding F4

“California law limits prosecution of fentanyl deaths as homicides. Fentanyl death related cases are selectively referred for federal filing consideration. The Orange County District Attorney has cross-designated one of its own senior deputy district attorneys to prosecute such cases under federal narcotics laws.”

Response to Finding F4: Agree

Finding F5

“California law does not provide for uniform admonishment of drug dealers of their potential criminal liability for drug-related deaths. Proposed legislation requiring judicial admonishments has been rejected by the California Legislature.”

Response to Finding F5: Agree

Finding F6

“Under current California law, fentanyl related felonies are not subject to additional penalty for weight enhancements as are other dangerous drugs such as cocaine and heroin.”

Response to Finding F6: Agree

Finding F7

“Orange County will benefit by establishing a chartered multi-agency Task Force to address the fentanyl crisis in Orange County.”

Response to Finding F7: Agree

Finding F8

“As long as there is a demand, producers will find ways to supply drugs. Orange County cannot law enforce its way out of the fentanyl crisis. Education, prevention, and treatment are critical to reducing demand.”

Response to Finding F8: Agree, with qualification.

Strong enforcement of criminal laws is a key component to addressing the fentanyl crisis.

Finding F9

“There is a need to increase public awareness and acknowledgement of the risks of illicit fentanyl.”

Response to Finding F9: Agree

Finding F10

“Some educational institutions are not participating in available educational and preventive fentanyl/drug programs.”

Response to Finding F10: N/A.

OCDA is not in a position to comment on the accuracy of this statement.

RECOMMENDATIONS AND RESPONSES

Recommendation R1

“By January 1, 2024, the Orange County Board of Supervisors should charter a multi-agency Task Force to address the fentanyl crisis. (F2, F7, F8, F9)”

Response to Recommendation R1: Requires Further Analysis

While OCDA supports all efforts to combat the fentanyl crisis and coordinating with other agencies to address the crisis is a worthy goal, to fully comment on this recommendation would require input from other stakeholders/agencies and consultation with the Board of Supervisors, seemingly charged as the chartering body of this endeavor.

The scope of the analysis is likely to include finding answers to the following questions:

- 1) What is the specific mission statement of the Task Force?
- 2) What agencies should be involved?
- 3) Should there be an interdisciplinary approach?
- 4) What is the methodology of coordination?
- 5) Will this be a consultative or active Task Force?
- 6) How will the personal safety of participants be prioritized?
- 7) How will the effectiveness of the Task Force’s defined goals be monitored and evaluated?

- 8) What additional resources will be allotted to the participating agencies that might allow for participation?

Depending upon the answers to the above questions, a timeframe for further discussion could then be determined.

Recommendation R2

“By July 1, 2024, the Orange County Board of Supervisors, the Orange County District Attorney, and the Orange County Sheriff should lobby the California State Legislature to add fentanyl to the list of drugs subject to penalty enhancements in felony drug convictions and to add statutory authority for judicial admonishments when drug dealers and traffickers are convicted of fentanyl-related crimes. (F4, F5, F6)”

Response to Recommendation R2: Has Been Implemented

Fentanyl-related issues remain on the forefront of the OCDA’s legislative platform.

OCDA has and continues to lobby the California State Legislature for increased penalties in fentanyl-related crimes. Specifically, OCDA is a lead supporter of: 1) *AB 701 (Villapudua)* [seeking to add a penalty enhancement for possession a kilo or more of fentanyl]; and 2) *AB 367 (Mainschein)* [seeking to attach a great bodily injury enhancement to drug trafficking crimes that lead to serious injury or death of the user]. OCDA is also a supporter of: 1) *SB 226 (Alvarado Gill)*; and 2) *AB 675 (Soria)* [both seeking a penalty enhancement when carrying a loaded firearm while in possession of fentanyl].

In November 2021, OCDA announced the adoption of a new policy to implement a fentanyl advisement in Orange County, warning drug dealers that if they sell fentanyl and other dangerous narcotics and someone dies, they can be charged with murder. OCDA continues its efforts to make that advisement state law.

OCDA has and continues to lobby the California State Legislature to add statutory authority for judicial admonishments when defendants are convicted of manufacturing or distributing fentanyl. Through its lead support of *SB 44 (Umberg)* and support of *AB 18 (Patterson)*, OCDA plays a key role in attempting to deter future deadly conduct. Such advisements would provide notice similar to that currently mandated for DUI offenders, advising those that manufacture or distribute deadly fentanyl of the danger and potential consequences of their actions.

Finally, as a member of the California District Attorneys Association (CDAA), OCDA takes part in further lobbying efforts related to penalties and admonishments for fentanyl distribution. OCDA is a part of and coordinates with the CDAA’s Legislation Committee Fentanyl Working Group.

Recommendation R3

“By July 1, 2024, Orange County Law Enforcement agencies should work with social media companies to ensure law enforcement has timely access to drug-related criminal activity information on their platforms. (F1, F2, F3)”

Response to Recommendation R3: Has Not Yet Been Implemented, But Will Be Implemented in the Future, With Qualification.

While it is unclear what “work with social media companies” means, OCDA can contact social media companies to inquire about their data retention policies, requirements when submitting search warrants and subpoenas for documentation, and procedures for the timely compliance with requests for data and other information. This could help ensure that law enforcement has timely access to drug-related criminal activity information on their platforms.

The timeframe for implementation of this recommendation is approximately three (3) months.

In addition, modifications to company business practices, including prohibition of certain activities, retention of data and accelerated access to law enforcement, are goals that may be best addressed legislatively. To that end, OCDA is a lead supporter of *AB 1027 (Petrie Norris)*. This legislation will help strengthen California’s efforts to combat online drug sales by:

- a) Strengthening reporting and retention policies by requiring social media companies to post their policy regarding accounts actioned for drug related offenses;
- b) Ensuring greater transparency and accountability efforts from social media platforms in California;
- c) Requiring social media companies to retain data of accounts that violate their drug policies; and
- d) Requiring the Attorney General to create a clear and designated point of contact in their office to direct proactive reports related to drug activity where imminent threat to life is identified.

If AB 1027 is eventually enacted into law, ensuring that law enforcement has timely access to drug-related criminal activity information on their platforms will be enhanced.