

This document is an extract of a larger publication.

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**APPENDICES**

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## COMPENSATION COST TRANSPARENCY

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### APPENDIX A – Compensation Cost Transparency Honor Rolls - Page 1 of 3

The 2012 **Gold Honor Roll** for supplying the best CCT in government for their citizens applies to the following cities and special districts. They all received **straight “A” ratings in all 3 categories** of Accessibility, Content & Clarity for Elected/ Executive and Employee compensation.

#### Cities-

- Buena Park
- Costa Mesa
- Laguna Woods
- Placentia
- Yorba Linda

#### Special Districts -

- Buena Park Library District
- Midway Sanitary District
- Placentia Library District

The 2012 **Silver Honor Roll** for supplying excellent CCT in government for their citizens applies to the following county, cities and special districts at the Executive & Elected official level. The county and cities below all received **“A” ratings in 2 categories** of Executive Accessibility and Content & Clarity. The special district below received an **“A” rating in the 2 categories** of Employee Accessibility and Content & Clarity, as they have no Executive page:

#### County

- County of Orange

#### Cities -

- Dana Point
- Irvine
- La Habra
- Rancho Santa Margarita
- San Clemente
- San Juan Capistrano
- Stanton

#### Special Districts -

- Silverado-Modjeska Recreation & Parks District

**APPENDIX A – Compensation Cost Transparency Honor Rolls** - Page 2 of 3

The 2012 **Bronze Honor Roll** for supplying excellent CCT accessibility in government for their citizens applies to the following cities, special districts and joint power authorities. They all received “A” ratings in Accessibility.

**Cities -**

- Aliso Viejo
- Anaheim
- Brea
- Garden Grove
- La Palma
- Laguna Beach
- Laguna Hills
- Lake Forest
- Mission Viejo
- Newport Beach
- Orange
- Tustin
- Villa Park

**Special Districts -**

- Costa Mesa Sanitary District
- East Orange County Water District
- El Toro Water District
- Irvine Ranch Water District
- Mesa Consolidated Water District
- Moulton Niguel Water District
- Orange County Cemetery District
- Orange County Sanitation District
- Orange County Transportation Authority
- Orange County Water District
- Serrano Water District
- South Coast Water District

**APPENDIX A – Compensation Cost Transparency Honor Rolls** - Page 3 of 3

The 2012 **Most Potential for Improvement List** in local government compensation cost transparency applies to the following cities and special districts. They received at least one “F” in one or more of the three categories.

**Cities -**

- **Fountain Valley**
- **Huntington Beach**
- **La Habra**
- **Westminster**

**Special Districts -**

- **El Toro Water District**
- **Orange County Vector Control District**
- **Rossmoor Community Service District**
- **Santa Margarita Water District**

**COMPENSATION COST TRANSPARENCY**

**APPENDIX B: CalPERS (California Public Employees' Retirement System) Employer Contribution 2011 Rates<sup>27</sup>**

*% of Current Employee Payroll that the Employer must contribute to CalPERS in 2011*

<b>Cities</b>	<b>General</b>	<b>Safety</b>	<b>Safety-Fire</b>	<b>Safety-Police</b>
Aliso Viejo	9.539%			
Anaheim	20.389%		29.228%	30.623%
Brea	11.219%	30.347%		
Buena Park	14.700%	25.821%*		
Costa Mesa	16.583%		32.404%	29.063%
Cypress	12.222%	32.407%*		
Dana Point	10.059%			
Fountain Valley	17.800% - 1 <sup>st</sup> Tier<	28.859% - 1 <sup>st</sup> Tier<		
Fullerton	11.119%	30.2%		
Garden Grove	17.854%	33.178%		
Huntington Beach	15.311%	34.196%		
Irvine	21.733%			32.678%
La Habra	11.752%	31.962%		
La Palma	14.762%	25.821%*		
Laguna Beach	15.258%	21.252% - Lifeguard	24.112%^	24.112%^
Laguna Hills	11.271%			
Laguna Niguel	10.539%			
Laguna Woods	10.896%			
Lake Forest	12.170%			
Los Alamitos	10.748%	25.21%*		
Mission Viejo	16.361%			
Newport Beach	12.208%	35.028%>		
Orange	18.646%	29.613%		
Placentia	9.548%	44.581%*		
Rancho Santa Margarita	16.497% - 1 <sup>st</sup> Tier<			
San Clemente	#	32.546% - Lifeguard		
Santa Ana	18.373%	28.848%		
Seal Beach	9.313%	25.821%*		
Stanton	13.523%			
Tustin	9.943%	32.17%*		
Villa Park	20.046%			
Westminster	14.494%	25.821%*		
Yorba Linda	13.996%			

<sup>27</sup> CalPERS - <http://www.calpers.ca.gov/index.jsp?bc=/employer/actuarial-gasb/contrib-rates/rates/home.xml>

## COMPENSATION COST TRANSPARENCY

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### **Appendix B Notes Legend:**

\* OCFA notes that these \*rates of OCFA serviced cities apply only to non-fire safety employees

< Second Tier Levels in effect currently -

Second Tier level for Fountain Valley General Employees is 8.902% & 20.308% for Police

Second Tier level for Rancho Santa Margarita General Employees is 8.704%

> A Future Second Tier Level was approved in May, 2012 by Newport Beach for Firefighters that will go into effect in 2014 that will have Newport Beach *“paying 80% of pension costs annually instead of the 94% annually they are currently contributing. ... It will take 18 months for the new contribution percentages to take effect.”*<sup>28</sup>

^ Laguna Beach has subsequently implemented a second tier for public safety officers

# Administered by Great-West Retirement Services for San Clemente non-safety employees

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<sup>28</sup> *“Newport Beach firefighters to pay more of pensions”*, Orange County Register, May 25, 2012, Local, Government, p. 9.

**COMPENSATION COST TRANSPARENCY**

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**APPENDIX C: OCERS (Orange County Employees Retirement System) Employer Contribution 2012-2013 Rates<sup>29</sup>**

*% of Current Employee Payroll that Employer must contribute to OCERS in Fiscal Year 2013*

*Representative OCERS Examples and not a Comprehensive listing*

<b><u>City</u></b>	<b><u>General</u></b>	<b><u>Safety</u></b>
San Juan Capistrano	( <a href="#">2.7%@55</a> ) – Rate Group #2	28.39%
	( <a href="#">2.0%@57</a> ) – Rate Group #2	27.49%
<b><u>County Special Districts</u></b>		
Orange County Cemetery District		
	( <a href="#">2.0%@55</a> ) Rate Group #11	17.76%
Orange County Sanitation District – OCSD		
	( <a href="#">1.664%@57</a> ) Rate Group #3	26.69%
	( <a href="#">2.5%@55</a> ) Rate Group #3	27.47%
Orange County Transportation Authority – OCTA		
	Rate Group #5	20.96%
<b><u>Joint Power Authority</u></b>		
Orange County Fire Authority – OCFA		
	( <a href="#">2.7%@55</a> ) Rate Groups #10	27.99%
	( <a href="#">2.0%@55</a> ) Rate Group #10	27.25%
	( <a href="#">3.0%@50</a> ) Rate Group #8	45.46%
	( <a href="#">3.0%@55</a> ) Rate Group #8	42.22%
<b><u>County of Orange</u></b>		
General – Rate Group #1		16.85%
General	( <a href="#">1.62%@65</a> ) Rate Group #2	21.94%
General	( <a href="#">2.7%@55</a> ) Rate Group #2	28.39%
Law Enforcement	( <a href="#">3.0%@50</a> ) Rate Group #7	47.45%
	( <a href="#">3.0%@55</a> ) Rate Group #7	46.78%
Probation	( <a href="#">3.0%@50</a> ) Rate Group #6	36.29%

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<sup>29</sup> “OCERS 2010 Actuarial Valuation and Review” by The Segal Group, Inc.  
<http://www.ocers.org/pdf/finance/actuarial/valuation/2010actuarialvaluation.pdf>



**APPENDIX D - Compensation Cost Disclosure Model** - Page 2 of 2

In the interest of consistency and clarity in the disclosure of compensation cost data for local government officials and employees, the 2010-2011 Orange County Grand Jury developed a model table on the previous page, which could be posted onto the Internet websites of local governments in Orange County. The 2011-2012 Orange County Grand Jury has enhanced and expanded the applicability of the model for clarity, emphasis and scope, as local websites have evolved. The fundamental elements of the model on the websites would provide the following.

- **Accessibility** – The link from the home page to the compensation cost web page be a permanent feature, which is prominently displayed on the home page, as both self-descriptive and intuitive, requiring very minimal keystrokes for access.
  
- **Positions Reported** – All elected officials and those executive positions earning a base salary rate in excess of \$100,000 per year should be reported on an **Executive Compensation Page**. Elected officials should be listed first, followed by employees in descending order of salary.

The salaries and benefits for all employee positions should be posted in a standard table on a separate on the **Employee Compensation Pages**.

**Note:** The listing of names is not recommended on the compensation cost listings of employee position salaries and benefits, but is preferable for elected officials.

- **Salary Reporting** – The actual or annualized base rate of salary for the position should be shown, rather than minimum & maximum ranges or the employee’s W-2 form Box 5 amount.

**. Overtime Pay – Actual overtime pay by employee position**

• **Other Pay**

- **Fees** – Fees earned from reporting agency-sponsored boards, committees or commissions
- **Deferred Compensation**
- **Bonus** – Any form of management, incentive or performance improvement bonuses.
- **Pay in Lieu of Time Off**
- **Automobile Allowance**
- **On-Call Pay**

- **Insurance Premiums** - Annualized amounts that the reporting agency pays on the employee’s behalf for medical, dental, vision, disability and life insurance.

• **Pension Costs** – Annual amounts that the reporting agency pays for contributions to a pension plan (such as CalPERS or OCERS) and/or Social Security. ***This is the government’s share of the Employer Pension Annual Contribution to CalPERS, OCERS & Social Security, in addition to the Employer payment of any share of the Employees obligated contribution percentage.*** See Appendices B and C.

- **Total Compensation** – Salary and benefit amounts should be totaled for the calendar year.

\* **RED** denotes new reporting requirement in 2012.

**APPENDIX E: Methodology Details** – Page 1 of 2

- Reviewed the three 2010-2011 Orange County Grand Jury reports on:
  - Compensation Study of Orange County Cities;
  - County of Orange Compensation Disclosure;
  - Compensation Survey of Orange County Water and Sanitation Districts.
- Reviewed 54 city, water & sanitation districts and county government response letters<sup>30</sup> to the findings and recommendations of the three previous 2010-2011 Orange County Grand Jury reports.
- The 53 entities in the 2010-2011 studies were the 34 Cities of Orange County, one County government and 18 Water & Sanitation Special Districts.
- The 34 cities included Aliso Viejo, Anaheim, Brea, Buena Park, Costa Mesa, Cypress, Dana Point, Fountain Valley, Fullerton, Garden Grove, Huntington Beach, Irvine, La Habra, La Palma, Laguna Beach, Laguna Hills, Laguna Niguel, Laguna Woods, Lake Forest, Los Alamitos, Mission Viejo, Newport Beach, Orange, Placentia, Rancho Santa Margarita, San Clemente, San Juan Capistrano, Santa Ana, Seal Beach, Stanton, Tustin, Villa Park, Westminster and Yorba Linda.
- The 18 Water and Sanitation Special Districts were Costa Mesa Sanitation District, East Orange County Water District, El Toro Water District, Irvine Ranch Water District, Laguna Beach County Water District, Mesa Consolidated Water District, Midway City Sanitary District, Moulton Niguel Water District, Municipal Water District of OC, Orange County Sanitation District, Orange County Water District, Rossmoor/Los Alamitos Area Sewer District, Santa Margarita Water District, Serrano Water District, South Coast Water District, Sunset Beach Sanitary District, Trabuco Canyon Water District and Yorba Linda Water District.
- Discussed in conversations, both in person and by phone, with selected Orange County cities and county governments about their 2010-2011 responses.
- Expanded the 2012 study to include 7 additional special districts, 1 joint power authorities (JPAs), and eliminated 3 water and sewer district to make a total of 58 governmental web sites to be reviewed.
  - The 8 additions are the:
    - Joint power authority of the Orange County Fire Authority;
    - 6 Special (non-water and sanitation) Districts of Buena Park Library District, Orange County Cemetery District, Orange County Vector Control, Placentia Library District,

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<sup>30</sup> 54 letters were received from 53 entities (34 cities, 18 water & sanitation districts and 1 county government) since the city of Laguna Hills sent a separate minority and majority response. All response letters to the 2010-2011 Orange County Grand Jury reports can be found at [www.ocgrandjury.org/reports.asp](http://www.ocgrandjury.org/reports.asp).

**APPENDIX E: Methodology Details** – Page 2 of 2

Rossmoor Community Services District and  
Silverado/Modjeska Recreation & Parks District.

- 1 Special (transportation) District, which is the Orange County Transportation Authority.
- The 3 eliminations are Rossmoor/Los Alamitos Sewer District (no longer has a web site), Sunset Beach Sanitary District (which doesn't have a web site) and Laguna Beach County Water District, (now a part of the City of Laguna Beach).
- Corresponded with the OC local governments to be studied –
  - Re: the establishment of this study to examine the local government web sites for the level of CCT, in terms of accessibility and content & clarity – by letters
    - Dated January 9 & 10, 2012 to 34 cities & 23 special districts/joint power authorities
    - Dated January 24, 2012 to Orange County CEO
  - Re: the frequently asked questions (FAQ's) concerning the Compensation Cost Transparency study – by letters
    - Dated February 23, 2012 to 34 cities & 23 special districts/JPAs
    - Dated March 8, 2012 to Orange County CEO
- Expanded the web assessment rating criteria to be more precise and objectively defined to build upon the previously more subjective rating criteria.
- Researched on the CalPERS web to obtain the OC cities' and special districts' individual public employer contribution annual percentage rate of employee salary that CalPERS requires the OC cities & special districts to contribute for their employee members' pensions.
- Solicited OCERS and obtained the OC individual public employer contribution annual percentage rate of employer salary that OCERS requires the county agencies, county JPAs and some city & special districts to contribute for their employee members' pensions.
- Reviewed, documented and assessed the transparency & content & clarity of each OC local government web site multiple times.
- Initiated explanatory phone conversations in March, 2012 with several special districts/joint power authorities, selected cities and County CEO office.
- Initiated February & March, 2012 phone conversations with the California State Controller Office's Bureau of Local Government Policy and Reporting to understand the state's local government compensation reporting requirements and future plans.
- Compiled data, charts & assessments from documentation & web reviews.
- Drafted and published study background, facts, analysis/findings & recommendations.

ELDER ABUSE IN ORANGE COUNTY

## **ELDER ABUSE: THE PERFECT STORM**



**GRAND JURY 2011-2012**

2011/2012 ORANGE COUNTY GRAND JURY

## **ELDER ABUSE: THE PERFECT STORM**

*“A nation’s greatness is measured by how it treats its weakest members.” Mahatma Gandhi*

### **SUMMARY**

*A Perfect Storm: A problem that is dramatically aggravated by a combination of circumstances.*

Many citizens in Orange County have entered their Golden Years. Most are financially stable, physically healthy and mentally alert. Despite the economic downturn, seniors may enjoy a good quality of life in a lovely mild climate. Unfortunately, a hidden side of aging exists in Orange County: elder abuse. This criminal and moral outrage can impact rich and poor, men and women, all faiths and cultures. Families, caregivers or strangers have been known to abuse or neglect elders. Abuse may be emotional, financial, physical or sexual and may also include abandonment, abduction and isolation. Neglect may stem from the inadequacy, indifference or cruelty of caregivers. Further, self-neglect is often a result of seniors striving for independence, but lacking the ability to provide adequate personal care.

Orange County Adult Protective Services (APS) noted a steep increase in the reported incidents of elder abuse in recent years that may stem from an actual expansion of abuse or an improvement in reporting methods.<sup>1</sup> However, statistics do not entirely reveal the reality. One purpose of this report is to show the human side of elder abuse.

The 2011-2012 Grand Jury chose this topic to determine the level of elder abuse in Orange County and evaluate the public agencies as well as list the private organizations that are resources in this field. Ultimately, the Grand Jury hopes to enlighten residents of Orange County about this problem. Some of the many factors that may contribute to elder abuse are:

- Baby boomers are now entering their retirement years and this large population group will affect the safety net for future decades.
- Elders who suffer from dementia, illness and injury are at greater risk of abuse.
- Emotional stress contributes to possible conflicts between elders and caregivers.
- Decreasing revenues have reduced governmental resources at all levels.
- The current economy has exacerbated the dilemma of abuse.

Orange County has encountered a perfect storm of elder abuse that will probably deepen with time. Governmental agencies must find ways to overcome these challenges with the assistance of private organizations and individual citizens.

### **REASON FOR STUDY**

*“...the moral test of government is how that government treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; those who are in the shadows of life; the sick, the needy and the handicapped.” Hubert Humphrey<sup>2</sup>*

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<sup>1</sup> Orange County Adult Protective Services Fact Sheet., Last updated 02/02/12

<sup>2</sup> Humphrey, Hubert, last speech, November 1, 1977

At times, all human beings have special vulnerabilities and are unable to function at a high level. They must rely on the assistance of caregivers or the kindness of strangers to aid in their quest for a good quality of life. They are vulnerable not only in youth, but also during times of illness, disability or in the last stages of life. A civilized society has an obligation to care for the vulnerable, the defenseless, the abused and the disenfranchised.

Policy debates about the merits of using public (taxpayer funded) or private (charitable or faith-based) sectors to provide for our weakest residents are appropriate. However, this Grand Jury study evaluates the current realities of elder abuse and the public responses in Orange County rather than considering the theoretical and philosophical questions of how the responsibilities should be delegated. The reasons for this study are to:

- Identify prevention techniques and programs to address elder abuse;
- Explore the hidden world of aging adults;
- Evaluate agencies and organizations that serve the elderly;
- Understand the problems of caregivers of the elderly;
- Show the human side of elder abuse;
- Determine if Orange County resources are sufficient to provide a safety net for elders;
- Enlighten and educate the community; and
- Recommend changes to improve the quality of care.

### **METHODOLOGY**

The 2011-2012 Orange County Grand Jury gradually formulated methods to understand and evaluate elder abuse in Orange County and took the following actions:

- Compared the primary governmental agencies that provide services in combating elder abuse: Adult Protective Services, Adult Mental Health Services, the Office on Aging and the Public Guardian;
- Conducted internet searches on the general field of elder abuse within the United States;
- Discovered and evaluated agencies, departments and organizations that provide resources and assistance in the areas of elder abuse and senior life;
- Interviewed private and governmental specialists in elder abuse;
- Listened to informational phone calls at the Office on Aging;
- Participated in a ride-a-long with an investigator from the Public Guardian's Office;
- Researched investigation and prosecution information related to elder abuse;
- Read selected books, magazines and newspaper articles on the topic of elder abuse in the United States;
- Read literature and materials from public and private organizations that describe elder abuse statistics, cases and resources available;

- Read specific information on law enforcement and prosecution concerning elder abuse compiled and written by a San Diego district attorney and subsequently interviewed that district attorney;
- Reviewed previous Orange County Grand Jury reports;
- Reviewed written information relevant to programs, finances, staffing and governance; and
- Toured an adult day care center, the Council on Aging and the Office on Aging.

## **BACKGROUND AND FACTS**

### **Overview**

- **Sources**

The Orange County Grand Jury reviewed elder abuse in Orange County for many months and gradually uncovered information from a variety of sources. Appendix B contains a list of references that the Grand Jury used for research and information. Footnotes contain only specific references.

- **Prevalence of Elder Abuse**

Orange County Adult Protective Services (APS) is the first line of defense in combating elder abuse cases. APS receives more than 600 reports of abuse each month<sup>3</sup> and national experts estimate that for every report of abuse, 23 are unreported<sup>4</sup>. The U.S. Senate Special Commission on Aging reports that victims of elder abuse, neglect and exploitation are not only subject to injury from mistreatment, they are approximately three times more likely to die at an earlier age.<sup>5</sup>

Citizens and legislators need to be aware of the magnitude of the problem to be proactive in determining solutions. According to the Center of Excellence on Elder Abuse, University of California, Irvine, “Elder Abuse is one of the most overlooked public health hazards in the United States. The National Center on Elder Abuse estimates that between one and two million elderly adults have suffered from some form of elder abuse.”

Orange County Adult Protective Services (APS) noted a steep increase in the reported incidents of elder abuse in recent years that may stem from an actual expansion of abuse or an improvement in reporting methods<sup>6</sup>. Many years ago, legislators became aware of the prevalence of elder abuse and enacted laws requiring mandated reporters to notify authorities if they suspect abuse is responsible for injuries to elders. Mandated reporters include social workers, clergy, doctors, nurses and caregivers. On January 1, 2007, through California Senate Bill 1018,

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<sup>3</sup> Orange County Adult Protective Services Fact Sheet,, Last updated 02/02/12

<sup>4</sup> New York State Life Span; Cornell; 2012.

<sup>5</sup> Sandal, Diane and Hudson, Lois; *Ending Elder Abuse*; QED Press, Fort Bragg, California; 2008

<sup>6</sup> Orange County Adult Protective Services Fact Sheet,, Last updated 02/02/12

financial institutions also became mandated reporters if seniors appear to be victims of fraud or coercion. As a result, reporting of elder abuse has risen.<sup>7</sup>

Upcoming baby boomers will further strain an already strained system. Baby boomers were born beginning in 1946 in post-World War II America and ending in 1964. The oldest group of babies who were born at that time has now applied for Medicare; this trend will continue for decades with baby boomers challenging the safety net system for elders. According to California State statistics, by 2020, the senior citizen population will expand by 62%.<sup>8</sup> The result will be a potential increase in both real and reported cases of senior abuse in Orange County.

- **Impact of Elder Abuse**

Abuse may be emotional, financial, physical or sexual and may also include abandonment, abduction and isolation. Abuse can leave permanent physical, emotional or financial scars on seniors who may lose their health, fortunes or lives because of the actions or inactions of families, friends, caregivers or the predators within any community.

Elders have a wealth of talents, experience and wisdom. Many elders volunteer to help their children, grandchildren, neighbors and religious organizations. However, abuse diminishes (and sometimes ends) the capacities of elders to contribute to society.

- **Issues of Elder Abuse in Orange County**

- A. Oversight

The services provided by county/city governments and private organizations have been developed over time. The Grand Jury observed the high quality and variety of resources and the commitment of both professionals and volunteers, but also noticed the lack of coordination and communication among agencies and organizations and the possible duplication of effort.

- B. Public Access

The general public does not necessarily have contact information if they encounter elder abuse. The Grand Jury now knows that Adult Protective Services is one of the first line contacts for elder abuse. The Grand Jury now knows that the Office on Aging provides information and resources for seniors and caregivers. The Grand Jury now knows that the Public Guardian is available to help incapacitated seniors (without families) who meet state conservatorship criteria. The Grand Jury now knows that Adult Mental Health Services conducts psychological assessments for the elderly. Would the average person know the specific names, functions and telephone numbers of these agencies? The Grand Jury considers that it is important to increase awareness of the services available in Orange County on the topic of elder abuse.

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<sup>7</sup> Orange County Adult Protective Services Fact Sheet,, Last updated 02/02/12

<sup>8</sup> Sandal, Diane and Hudson, Lois; *Ending Elder Abuse*; QED Press, Fort Bragg, California; 2008

### C. Investigation/Prosecution

Many individuals in the elder abuse community confidentially expressed to the Grand Jury that:

- Law enforcement agencies needed more training to handle elder abuse complaints and;
- The District Attorney's office needed greater diligence in prosecuting elder abuse cases.

The Grand Jury recognizes the difficulty of investigation and prosecution:

- Most abuse occurs in a family setting and elders are often reluctant to accuse, or testify against, relatives.<sup>9</sup>
- Elders suffering from dementia have difficulty participating in an investigation or trial.
- Law enforcement departments have had reductions in staffing and newspaper reports and information in some city councils indicate this trend may continue.
- Assembly Bill 109 (AB109) was implemented on January 1, 2012. This law releases felons from state prisons, returns them to county jails and eventually to the community. The 2011-2012 Grand Jury has spoken to many experts in law enforcement who predict that this law will increase the difficulties of law enforcement.

The Grand Jury considered that it would be unconscionable IF offenders face no consequences for their actions. Therefore, the Grand Jury surveyed internet sites to gather information on the methods used in other areas to respond to these potential problems of law enforcement and prosecution. The Grand Jury also interviewed Paul Greenwood, a district attorney in San Diego County, who heads a special unit to process elder abuse cases. Mr. Greenwood has testified before Congress on this topic and he presented the Grand Jury with information regarding the success of San Diego County in combating elder abuse through the following methods:

- Fostering coordination and cooperation among Adult Protective Services, the District Attorney's office and other agencies;
- Creating a special unit for elder abuse within the office of the District Attorney;
- Publishing a "Safe Seniors" newsletter to inform the public of issues regarding elder abuse including a list of recent prosecutions;
- Making elder abuse a priority for law enforcement and prosecution;
- Dispelling the myths about seniors that are barriers to law enforcement investigation and to prosecution. These fallacies are listed in Appendix A.

The Grand Jury also became aware of a program under the jurisdiction of Adult Mental Health Services: Psychiatric Evaluation Response Team (PERT). PERT will send an on-site specialist to law enforcement agencies to assess adults who show signs of dementia. The county does not charge for these services, but only a few cities avail themselves of this resource.

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<sup>9</sup> Orange County Adult Protective Services Fact Sheet,, Last updated 02/02/12

#### D. Information Technology

The Public Administrator/Public Guardian (the PA/PG) is now under new management. In past years, the Grand Jury wrote two reports that were critical of this agency. The 2008-2009 Grand Jury explained, “Information technology provides an essential role in the effective operation of any agency”<sup>10</sup> and that the computer system under review was, “inadequate for its intended task”. Additionally, a 2006 report from the Internal Audit Department found Information Technology to be a “**Significant Issue**”<sup>11</sup>. Since 2006 or earlier, the computer systems have not been efficient in providing information and statistics in order to document findings and to operate a complex agency. The PA/PG purchased a system with a new vendor a few years ago, but they report the computer has never been fully operational. The PA/PG is currently working with another system and considering a purchase. The Grand Jury considers that county governmental agencies and departments must have effective computer technology that serves the needs of the community.

#### E. Definitive Study

The Grand Jury determined that a more definitive study in the future would be necessary to address these specific issues. The Grand Jury is especially concerned because of the steadily rising increase in elder abuse as well as the expected population increase in coming decades

#### **Factors in Elder Abuse**

Multiple factors (listed below) contribute to elder abuse and combine to produce a perfect storm that may stress existing social systems beyond their limits.

- **Demographics**

Elder abuse occurs in all socioeconomic strata, subcultures, religions and neighborhoods. The abused may be male, female, married, divorced, single, successful or unsuccessful.

- **Economics**

The current economy has exacerbated the upward trend of elder abuse. Many elders or their family caregivers have less money and more difficulty finding jobs or making ends meet. The housing crisis has created extended families that may increase unhealthy interactions between the older and younger generations. Many families have fewer resources in terms of time and money with which to support the older generation. Additionally, all levels of the government are balancing increasing societal needs with decreasing revenues.

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<sup>10</sup> 2008-2009 Grand Jury Report, “Guardian of Last Resort”

<sup>11</sup> Consolidated Audit Report of the PA/PG, January 19, 2006

- **Ethnicity**

Orange County has an extensive ethnic and language diversity. Some elders or caregivers have limited English skills and have difficulty using available resources. Cultural patterns may create difficulties for individuals to seek assistance from strangers or governmental agencies.

- **Family**

In modern American life, families are often spread out over vast geographical areas. Many elders thrive in their own communities, but some are unable to fend for themselves without the bond of relatives. Seniors may also develop an increase in dementia or a decrease in physical capacities and if they have no families to help they may engage in a pattern of self-neglect. An increasing number of elders live with their families because of illness or disability combined with financial considerations. Additionally, adult children who struggle to make ends meet may be less able to care for elders. Some families may also play an unfortunate role as most abusers are relatives.

Family caregivers are often ignored. Many adults are now members of a “sandwich” generation caught between the needs of the older and younger generations while still earning a living and maintaining a home. Caregivers themselves need understanding, education, training and sometimes respite care to continue providing for all the requirements of an extended family.

- **Risks of Abuse**

Elders who suffer from dementia, illness or injury are at greater risk of abuse because they have a higher level of vulnerability combined with a decreased ability to report crimes committed against them. Most dementia in the elderly is created by Alzheimer’s disease that progressively destroys brain cells, but other causes exist.

Comparative age plays a role in the incidents of elder abuse with the very oldest being the most vulnerable. Those over 85 have a 50% chance of suffering incapacitating dementia<sup>12</sup> and also have a six-fold increase in the incidents of abuse compared with seniors in the 65-84 age bracket.<sup>13</sup>

Social isolation can lead to a greater vulnerability to abuse. Elders who do not have close friends and family can deteriorate more quickly than elders who are socially engaged. Lack of companionship or social outlets can cause depression.<sup>14</sup>

### **Types of Elder Abuse**

The 2011-2012 Grand Jury prepared composite stories to illustrate elder abuse in Orange County for insertion into this section.

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<sup>12</sup> Sandal, Diane and Hudson, Lois; *Ending Elder Abuse*; QED Press, Fort Bragg, California; 2008

<sup>13</sup> Orange County Adult Protective Services Fact Sheet, Last updated 02/02/12

<sup>14</sup> Quinn, Mary Jo and Tomita Susan; *Elder Abuse and Neglect*; 1996

## 1. Financial Abuse

Families, friends or strangers can strip seniors of money, possessions and resources. Elders with cognitive impairments have a much higher risk of financial abuse. Predators are adept at creating scams aimed at the elderly. The Council on Aging stated that financial abuse of seniors “is the rampant, insidious crime of the millennium”. Improved laws that mandate reporting by financial institutions have increased the volume of reporting. Methods of financial abuse are:

- Burglary
- Extortion
- Intimidation
- Forgery
- Fraud
- Scams – by internet, mail, personal contact or phone
- Theft
- Threats

*Story: The Loving Daughter*

*Mrs. B. was a widow with Alzheimer’s. She moved into the home of her daughter and son-in law and agreed to pay \$500.00 every month for her room, board and care. As the dementia progressed, her daughter persuaded Mrs. B. to move funds periodically from investments into the checking account. Every day the daughter informed Mrs. B. that it was a new month. Every day Mrs. B. wrote another \$500.00 check until her funds were depleted.*

*Story: The Grandma Scam*

*An imposter called an elder in the middle of the night and pretended to be her grandson. He explained that he had been arrested in Canada. The concerned grandmother sent a large sum of money to rescue her “grandchild”. Grandma later discovered that her real grandson was fine and she had been defrauded.*

*Story: The Good Samaritan*

*Mr. C. met a caring middle-aged woman at his church. She offered to clean his house and cook his meals for a reasonable fee. She eventually moved into his home and persuaded Mr. C. to allow her access to his financial accounts. When she left six months later, Mr. C. learned that she has stolen all his assets.*

## 2. Physical Abuse

Physical abuse of elders can result from the intentional cruelty or indifference of caregivers. Special training is often needed to teach caregivers how to handle the difficulties of elders with dementia. Without guidance, many caregivers respond with anger and impatience and become abusive. Regardless of the causation of the abuse, elders may be hospitalized with broken bones or organ damage. The abuse may be so severe it can lead to death.

*Story: Fathers and Sons*

*Mr. D. was hospitalized after an attack by his son who was his caregiver. His son was an alcoholic and frequently beat his bedridden father. After a neighbor called 911, Mr. D. was placed in a board and care home and his son was sentenced to jail.*

Statistics: In 2011, Orange County Adult Protective Services received 7,238 reports of abuse with 28% for dependent adults with disabilities in the 18-64 age brackets. Of the total, 72% was for seniors 65 or older.<sup>15</sup>

Red flags of physical abuse:

- Obvious bruises, lacerations, abrasions, fractures, welts, discoloration or swelling with no clear cause or explanation;
- Pain or tenderness on mere touch;
- Burns caused by cigarettes, ropes or other bonds;
- Elder is withdrawn or demonstrates dramatic change in behavior.

## 3. Emotional Abuse

Elders may be subject to emotional abuse from caregivers in an oral form such as yelling, criticism, disparagement or harassment. Emotional abuse also occurs when caregivers deny elders opportunities for companionship, spiritual activities or intellectual stimulation. Elders may respond with confusion, agitation, fear and depression. Some elders suffer serious emotional abuse due to threats, coercion and intimidation.

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<sup>15</sup> Orange County Adult Protective Services Fact Sheet., Last updated 02/02/12

*Story: The Scapegoat*

*Mrs. S. lived with her divorced son and his teenage children. Her son was verbally abusive with all family members and her adolescent grandchildren followed the role modeling of their father. Mrs. S. became the family scapegoat until she finally called the Office on Aging. She was given helpful suggestions and she decided to move to an assisted living home. She now lives in a serene, happy environment.*

Red flags of emotional abuse are the appearance of:

- Fear, confusion or withdrawal
- Depression
- Unusual mood changes or anger
- Fear of being touched or approached by others
- Unusual introversion or withdrawal

#### **4. Sexual Abuse**

Rape occurs among the oldest and most vulnerable of all. Sexual abuse is terrible at any age, but takes a greater toll on the fragile bodies and minds of the aged.

*Story: The Home Owner*

*Mrs. R. engaged a handyman to do some work on her home. When Mrs. R. refused to give him money in advance, he raped and beat her. He was prosecuted and sentenced to prison. Mrs. R. is still afraid to leave her home or answer the door. She lives in isolation.*

#### **5. Neglect**

Caregivers become neglectful for many reasons including indifference and lack of empathy or compassion. Many caregivers have the pressures of careers and family/domestic responsibilities.

*Story: The Meth Lab Home*

*Mrs. S. was an 87 year old widow who lived in a mobile home. Her out-of-state niece called 911 after being unable to contact her aunt. When the police arrived, they discovered the woman was living in a meth lab built and maintained by her son who was her caretaker. Mrs. S. was alone and unable to leave her bed. Her caretaker was arrested and Mrs. S. was moved to a board and care home.*

*Story: The Unaware Caregiver*

*A 70 year old woman suffered a stroke, was confined to bed and unable to speak well. Her granddaughter moved into the home to help. The granddaughter did not understand the needs of the grandmother who developed severe bedsores. A spring from her bed actually penetrated her flesh and caused excruciating pain. Fortunately a friend visited and immediately called 911. The woman was hospitalized and was eventually able to use the resources available in Orange County.*

Red Flags of Neglect

- Lack of basic hygiene
- Lack of adequate food
- Lack of medical aids (glasses, walker, teeth, hearing aid, medications)
- Lack of clean appropriate clothing
- Person with dementia left unsupervised
- Bed bound person left without care
- Untreated pressure sores “bed sores”
- Sudden weight loss or signs of dehydration or malnutrition

**6. Self-Neglect**

Elders have spent many years of their lives in independence and self-sufficiency. They may find difficulty in adjusting to older bodies and fragile minds. Self-neglect creates massive problems for elders. They may fail to eat nutritious food or keep medical appointments. In some cases they represent a serious hazard to themselves and others around them.

Red Flags of Self Neglect

Inability to:

- Provide personal care or
- Obtain food, water, medical care, medications.

*Story: The Greatest Generation*

*Mr. D. survived the Great Depression and served in the military during World War II and Korea. He was always fiercely independent and proud of his ability to care for his wife and children. His wife died when he was 75 and he slowly began to feel the impact of aging on his body and his mind. He continued to drive even though he could barely see to navigate. He lived on a simple diet of cereal and sandwiches. He often forgot to pay bills. His concerned children contacted Adult Protective Services. Meals on Wheels provided nutritious food for him. His family arranged for him to attend an adult day center which gave him companionship and intellectual stimulation. Because of the assistance that he received, the quality of his life improved dramatically and he was able to remain in his own home for many years.*

## **7. Abandonment**

Some elders have serious problems of dementia or physical impairments. Family caregivers may abandon these elders and it can be difficult for law enforcement to discover the identity of the elders or the caregivers.

## **8. Abduction**

Caretakers sometimes take control of the lives of elders and may move elders into another state without permission. Regardless of age; adults have a right to make their own decisions. Abduction has been defined as “The removal from this state and the restraint from returning to this state of any elder or dependent adult who does not have the capacity to consent to this removal.”<sup>16</sup>

## **9. Isolation**

Caretakers may prevent elders from receiving mail, phone calls or visitors. Caretakers may even use restraints to prevent elders from meeting with others.

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<sup>16</sup> Council on Aging; “OC Senior Guide 2012”

## FINDINGS/CONCLUSIONS

In accordance with *California Penal Code* Sections §933 and §933.05, the 2011-2012 Orange County Grand Jury requires responses from each agency affected by the **Findings/Conclusions** presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its research into Elder Abuse, the 2011-2012 Orange County Grand Jury makes the following five Findings/Conclusions:

**F1.** Elder abuse reporting has been rising and will probably increase because of a projected expansion in the population partially due to an influx of baby boomers.

**F2.** Increased oversight would improve coordination and communication among county agencies and departments.

**F3.** Reviewing procedures in law enforcement agencies, law enforcement academies under Orange County government jurisdiction and the District Attorney's office could improve recognition of elder abuse

**F4.** The computer system in the Public Guardian's Office has been "inadequate for its intended use"<sup>17</sup> for many years impacting the ability of the Public Guardian to provide documentation in areas of elder abuse.

**F5.** A more definitive study is necessary to address four specific concerns within the area of elder abuse:

- A. Oversight over coordination and communication between agencies;
- B. Outreach and communication to the general public;
- C. Review of law enforcement and prosecution;
- D. Effective Information Technology to manage data flow.

## RECOMMENDATIONS

In accordance with *California Penal Code* Sections §933 and §933.05, the 2011-2012 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 research into Elder Abuse, the 2011-2012 Orange County Grand Jury makes the following seven recommendations:

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<sup>17</sup> 2008-2009 Grand Jury Report, "Guardian of Last Resort"

**R1.** By October 1, 2012, the Board of Supervisors should establish a one-year independent, volunteer commission, consisting of private citizens (including members of various oversight committees), to conduct a comprehensive study of the effectiveness of elder abuse resources in Orange County focusing on the following:

- A. The prevalence of elder abuse and the probable increase in the future;
- B. The efficacy of individual county agencies and departments;
- C. Interactions with Orange County agencies/departments and non-profit organizations that provide senior resources;
- D. The availability of outreach and communication to citizens concerning elder abuse;
- E. The procedures of law enforcement agencies to investigate reports of abuse; and
- F. The procedures used by the District Attorney's office to determine prosecution.

**R2.** By October 1, 2012, the Board of Supervisors should direct the Office of the Performance Audit Director to evaluate Adult Protective Services, The Office on Aging, Adult Mental Health Services and The Public Guardian. The evaluation would determine their individual effectiveness; assess their coordination and communication; and discover any overlap in services among them.

**R3.** By October 1, 2012, the County Executive Officer should direct the Information Technology Department to evaluate the computer system of The Public Administrator/Public Guardian to insure that this agency has a full capacity to report, coordinate and monitor elder abuse.

**R4.** By December 31, 2012, the County Executive Officer should review agencies and departments within his purview to determine if they provide an effective response to elder abuse without any duplication of responsibilities.

**R5.** By December 31, 2012, the Sheriff's Department and city police departments should evaluate and update their programs on responding to elder abuse cases.

**R6.** By December 31, 2012, the District Attorney should direct staff to review all procedures for prosecution of elder abuse cases.

**R7.** By December 31, 2012, the District Attorney should direct staff to review current information available throughout the country concerning elder abuse in order to design an updated program for prosecution.

#### **REQUIREMENTS AND INSTRUCTIONS:**

In accordance with *California Penal Code* Sections §933 and §933.05, the 2011-2012 Orange County Grand Jury requires responses from each agency affected by the **Findings/Conclusions** and **Recommendations presented** in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

*“Not later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section §914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations.*

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

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

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

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

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

or personnel matters over which it has some decision making aspects of the findings or recommendations affecting his or her agency or department.

- (d.) The Board of Supervisors, District Attorney and Sheriff-Coroner are required to respond to findings and recommendations. All other agencies set forth in the matrix are requested to respond.

Elder Abuse in Orange County

Table No. 1 – FINDINGS – RESPONSE MATRIX

NAME OF ENTITY	F1	F2	F3	F4	F5
COUNTY					
Adult Mental Health Services: Health Care Agency	X	X			
Adult Protective Services: Social Services Agency	X	X			
Board of Supervisors	X	X			X
County Executive Officer	X	X		X	X
District Attorney			X		
Office on Aging: OC Community Resources	X	X			
Public Guardian: Public Administrator/Public Guardian				X	
LAW ENFORCEMENT AGENCIES:					
OC Sheriff's Department: County & Contract Cities			X		
Anaheim Police Department			X		
Brea Police Department			X		
Buena Park Department			X		
Costa Mesa Police Department			X		
Cypress Police Department			X		
Dana Point Police Department			X		
Fountain Valley Police Department			X		
Fullerton Police Department			X		
Garden Grove Police Department			X		
Huntington Beach Police Department			X		
Irvine Police Department			X		
La Habra Police Department			X		
La Palma Police Department			X		
Laguna Beach Police Department			X		
Los Alamitos Police Department			X		
Newport Beach Police Department			X		
Orange Police Department			X		
Placentia Police Department			X		
Santa Ana Police Department			X		
Seal Beach Police Department			X		
Tustin Police Department			X		
Westminster Police Department			X		

Elder Abuse in Orange County

Table No. 2 – RECOMMENDATIONS – RESPONSE MATRIX

NAME OF ENTITY	R1	R2	R3	R4	R5	R6	R7
COUNTY							
Board of Supervisors	X	X					
County Executive Officer			X	X			
District Attorney						X	X
LAW ENFORCEMENT							
OC Sheriff's Department: County & Contract Cities					X		
Anaheim Police Department					X		
Brea Police Department					X		
Buena Park Department					X		
Costa Mesa Police Department					X		
Cypress Police Department					X		
Dana Point Police Department					X		
Fountain Valley Police Department					X		
Fullerton Police Department					X		
Garden Grove Police Department					X		
Huntington Beach Police Department					X		
Irvine Police Department					X		
La Habra Police Department					X		
La Palma Police Department					X		
Laguna Beach Police Department					X		
Los Alamitos Police Department					X		
Newport Beach Police Department					X		
Orange Police Department					X		
Placentia Police Department					X		
Santa Ana Police Department					X		
Seal Beach Police Department					X		
Tustin Police Department					X		
Westminster Police Department					X		

## APPENDIX A

Paul Greenwood, a district attorney in San Diego County, has spoken before Congress and across the county to dispel the myths (see below) that are barriers to law enforcement and prosecutors in the area of elder abuse.

Myth 1: Elderly people are bad witnesses.

Myth 2: If a victim refuses to provide information, law enforcement can do nothing.

Myth 3: No crime is committed if an elderly victim gives money voluntarily.

Myth 4: No victim exists if the financial institution reimburses the loss and no one seeks prosecution.

Myth 5: Prosecutions never occur if a victim is deceased before a crime is discovered.

Myth 6: Any case where the elderly victim is involved in a dispute over money in home repair is always a civil matter.

Myth 7: Suspects of elder abuse crimes never call 911.

Myth 8: Elders should not report an incident to law enforcement because nothing will be done.

Myth 9: All elderly people die from natural causes.

Myth 10: Law enforcement and the District Attorney have more important cases.

## APPENDIX B

### References:

- Center of Excellence on Elder Abuse and Neglect Fact Sheet; University of California, Irvine
- California State Guide to Elder Abuse, 2011
- Council on Aging; *“OC Senior Guide 2011”*
- Council on Aging; *“OC Senior Guide 2012”*
- Dezall, Maureen; *Guide to Alzheimer’s Disease*
- Elder Abuse Forensic Center information, <http://www.elderabuseforensiccenter.com>
- Grand Jury Report *Guardian of Last Resort*; 2008-2009
- Grand Jury Report *The Long-Term Care Ombudsman Program*; 2005-2006
- Greenwood, Paul, San Diego District Attorney; Power Point Presentation,
- The Gerontological Society of America; March 27, 2012

- Internal Audit Department County of Orange Report; January 19, 2006
- Orange County Adult Protective Services Fact Sheet; 01/25/11
- Quinn, Mary Jo and Tomita Susan; *“Elder Abuse and Neglect”*; 1996
- Sandal, Diane and Hudson, Lois; *Ending Elder Abuse*; QED Press, Fort Bragg, California; 2008

## APPENDIX C

*“Our society must make it right and possible for old people not to fear the young or be deserted by them, for the test of a civilization is the way it cares for helpless members.” Pearl S. Buck<sup>18</sup>*

**Orange County Governmental Resources** Orange County is fortunate to have many governmental resources to combat elder abuse.

### Adult Mental Health Services

The Health Care Department has a sub-section devoted to Adult Mental Health Services that provides much needed assessment and treatment for the dementias (including Alzheimer’s disease) that can be a part of the aging process. 714-972-3700

### Adult Protective Services

Adult Protective Services (APS) is a part of the Social Services Agency and assists senior adults (65 or older) and disabled, dependent adults (ages 18-64). APS investigates reports of abuse (with the exception of those in nursing homes who are under the jurisdiction of the Ombudsman as noted below). APS evaluates and provides options to protect elders and also helps link victims and family members to community resources. An APS Senior Social Worker will assist in developing plans for elders and families. All APS reports are held strictly confidential and that eases the fear of being identified as the person who reported the abuse. APS can also recommend resources within Orange County to elders, families and caregivers that can help to prevent further incidents of abuse. Additionally, APS will report cases of abuse to law enforcement as needed. 1-800-451-5155

### The Coroner/Medical Examiner

The Medical Examiner performs death reviews to determine how the person died. These reviews, based on current medial knowledge, can help authorities discover if elder abuse could be the cause of death.

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<sup>18</sup> Pearl S. Buck; My Several Worlds: 1954

### The District Attorney's Office

The District Attorney's Office is the last step in the criminal justice process. Individual district attorneys evaluate cases of abuse and determine whether to prosecute. 714-834-3600

### Law Enforcement

Some cities have individual police forces and others contract with the County Sheriff's Department. The Sheriff's Department is also responsible for unincorporated areas of Orange County. In emergencies, abused adults or caregivers can directly call these agencies to report abuse. Many reports of abuse are first directed to APS (Adult Protective Services) who then may notify law enforcement.

### Office on Aging

The Office on Aging is part of Orange County Community Resources. They have a call-in center that provides information and resources to caregivers and older adults. They have capable Information & Assistance Specialists who provide help with a myriad of services and resources throughout Orange County. Many staff members are bi-lingual and are able to assist with Orange County's diversified population. Staff can provide translation resources in more than 240 languages. The Office on Aging also administers approximately \$15 million in funds from federal, state, and local sources to services for seniors including adult day care and elder abuse prevention. For Information and Assistance call: 714-567-7500

### The Public Guardian

The Public Guardian is part of a larger entity – the Public Administrator/Public Guardian (PA/PG). The Public Guardian can become a court appointed conservator for elders with no family, including elders who have been abused. Additionally, elders can be monitored to prevent future abuse. The Public Guardian staff evaluates, recommends living arrangements, pays bills and guides the well-being of clients. 714-567-7660

### **Orange County Private Resources**

Orange County has many private organizations whose mission is to improve the quality of life for seniors.

### Adult Day Services

Adult Day Care providers have centers throughout Orange County for elderly clients. Providers, located in various cities, may be non-profit or for profit organizations. The centers are usually open during daytime hours Monday through Friday and provide social, medical and educational support for elders. The Grand Jury visited one organization in Orange County. Seniors were provided with nutritious food and assistance with medication. Clients had multiple opportunities to interact socially, stimulate their minds with games and engage in physical exercise. This center provided a daily basic health check, nursing supervision, classes and support services for

clients and families of clients. These centers may be profit or non-profit. Many clients receive assistance from the State of California to pay for these services. Many caregivers, who may be overwhelmed by the constant needs of elders, enjoy a respite from their responsibilities while the seniors are receiving care.

### Council on Aging

The Council on Aging is a non-profit organization devoted to providing information and education to the community about the multiple problems faced by aging citizens. The Council on Aging receives funding from a variety of sources including the County of Orange and has many organizations under their umbrella. 714-479-0107

- The Council on Aging publishes an informative yearly book “*Senior Guide OC*” that lists resources in Orange County. 714-479-0107
- Caring Connections Friendly Visitors that, “alleviates the physical and mental health risks linked to social isolation by offering a supportive social structure of trained volunteers who visit frail secluded older and disabled adults (18 years and older) who have lost their social network.”<sup>19</sup> 714-479-0107
- Financial Abuse Specialist Team (FAST) provides education on preventing financial abuse and educating seniors who face problems in this area. Public and private organizations refer clients to FAST and they assist in more than 200 cases in Orange County every year. 714-479-0107
- Health Insurance Counseling and Advocacy Program (HICAP) is sponsored by the Council on Aging. Trained volunteers provide education and individual counseling regarding Medicare and related issues. 714-479-0107
- The Long Term Care Ombudsman Program is state and federally mandated and is responsible for patients in skilled nursing homes and residential care facilities. Trained volunteers provide extra assistance to patients in problem resolution and “provide a voice for those unable to speak for themselves” “The Ombudsman Program is the reporting agency for any suspected abuse that occurs in licensed long-term care facilities”.<sup>20</sup> 1-800-300-6222

### Elder Abuse Forensic Center

The Elder Abuse Forensic Center, created through a grant from a private foundation, is the premier forensic center in the nation. The co-directors are a doctor with a specialty in geriatric medicine and a gerontologist. Together they help to diagnose and treat patients who have been affected by elder abuse. The center also meets weekly with other agencies and organizations in Orange County to review cases. 714-456-5530 or 714-835-3087

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<sup>19</sup> Council on Aging; “*OC Guide 2012*”

<sup>20</sup> Grand Jury Report *The Long-Term Care Ombudsman Program*; 2005-2006

### Human Options

The mission statement of Human Options is “To help battered women, their families and our community break the cycle of domestic violence.”<sup>21</sup> This organization is available to assist with elder abuse in Orange County. 877-854-3594

### Meals on Wheels

Two non-profit organizations in Orange County provide the Meals on Wheels program: Age Well in South County and Community SeniorServ in North County. The Meals on Wheels programs provides nutritious food (at a reasonable cost) for seniors on limited incomes and no family assistance who are physically unable to shop or cook for themselves.

### Senior Centers

Senior Centers are usually funded by individual cities. Centers provide many forms of social interaction as well as lunches, games, activities, education and physical fitness. Senior Centers are a valuable resource for information about activities for elders.

## APPENDIX D

### Legal Remedies for Elder Abuse

If elders, families, friends or caregivers encounter a problem with abuse, neglect or self-neglect they should take the following actions:

- If a situation appears to be life threatening or a crime is in progress, **immediately** call 911 or your local law enforcement agency.
- If an elder is the victim of abuse in the community, call the Adult Protective Services 24 hour line at 1-800-451-5155; TTY (for hearing impaired) 714-825-3207.
- If an elder is the victim of abuse in a licensed facility, call the Long-Term Care Ombudsman Service at 714-479-0107.

**Abuse may escalate without an intervention - do not delay in calling for help**

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<sup>21</sup> Human Options pamphlet: <http://humanoptions.org>. Pamphlet

OC EMERGENCY MEDICAL SERVICES

**EMERGENCY MEDICAL RESPONSE  
IN  
ORANGE COUNTY**



**GRAND JURY 2011-2012**

2011/2012 ORANGE COUNTY GRAND JURY

## **EMERGENCY MEDICAL RESPONSE**

**in**

## **ORANGE COUNTY**

*Where did all the “fires” go? Long time passing.*

Apologies to Pete Seeger

### **SUMMARY**

During the last forty years, the role of local fire departments has changed. The services have changed from fire prevention to medical emergency responses. In earlier days, the fire departments were predominately staffed with fire fighters with their fire trucks, but now these departments include paramedics and emergency medical technicians as part of the crews that respond to the calls. Today medical emergency calls account for at least 70 percent of fire departments emergency dispatches. The low percentage of fire emergencies, i. e., less than two percent in the Orange County Fire Authority (OCFA) alone, is attributed to improved building codes, more alarm devices, fire suppression systems, stricter code enforcement, and perhaps greater public awareness.

This transition from fire emergencies to medical emergencies has not generated major changes in the operation model for responding to these emergencies. Each emergency call generally results in both fire trucks and ambulances being dispatched to the site of the emergency regardless of the type of emergency. The emergency response communities have discussed developing new models, but little change has been accomplished. While the Orange County Emergency Medical Services (OCEMS) sets the medical standards and protocols for both non-emergencies and emergencies. The fire departments handle the actual operations.

The 2011-2012 Orange County Grand Jury concluded that the current emergency response models should be re-evaluated by independent outside consultants. This re-evaluation should consider the strengths, weaknesses, opportunities and threats to the economics and operations of both the OCFA and city fire department’s emergency response models. This Grand Jury recommends that these studies be completed and made public by July 31, 2013.

### **PURPOSE**

The 1996-1997 Orange County Grand Jury evaluated the Orange County Fire Authority (OCFA) shortly after the Authority was formed in 1995. That study compared the effectiveness of the new agency in relation to other fire departments within the county. That study addressed inequities in the costs to the various OCFA cities but did not address how the emergency services were provided. The 2011-2012 Orange County Grand Jury agreed that a restudy of the Authority

was due. During their review of the operations and finances of the OCFA it became apparent that the size of the organization lent itself to concentration on certain items. Consequently this Grand Jury has focused on the emergency response model of the OCFA and the twenty-three cities they serve. The results of this study could also apply to the neighboring eleven non-Authority city fire departments in Orange County.

### **METHODOLOGY**

The 2011-2012 Orange County Grand Jury used the following methods to gather information about the current and future modeling of emergency medical services:

- Interviewed fire chiefs of independent city fire departments of Orange County;
- Interviewed the Chief of the Orange County Fire Authority;
- Interviewed various members of the OCFA staff;
- Interviewed selected members of the OCFA Board of Directors;
- Interviewed selected city managers of participating cities and non-participating cities;
- Reviewed OCFA files at their headquarters;
- Attended OCFA Board of Directors and Finance Committee meetings;
- Interviewed the General Manager of Orange County Medical Emergency Services;
- Interviewed officers of a private ambulance company in Orange County;
- Interviewed a former private ambulance company owner;
- Reviewed past studies regarding emergency medical services;
- Reviewed various sources for statistics related to fire and emergency medical services;
- Prepared this report containing the findings, conclusions and recommendations.

### **BACKGROUND**

#### **History**

During the past 140 years, Orange County has grown from a rural agricultural area of less than 7,000 residents with one incorporated city into an urban county of more than 3,000,000 people in 34 cities. Major urbanization began in the 1950's when the population was only 216,000 with 11 incorporated cities. Each city had its own fire department supplemented by the Orange County Fire Department. Until the mid-1970's the fire departments' main responsibilities were fire prevention. At that time, emergency calls were handled by the local telephone operator. Calls such as, "I want to report a fire," or "I need an ambulance," were transferred by the operator to the fire department or to a private ambulance company depending on the type of emergency.<sup>1</sup> After some machinations, "9-1-1" became the nationwide emergency reporting number for all types of emergencies. The combining of fire departments and ambulance companies began as the private ambulance services were gradually replaced by the fire departments. Today, the

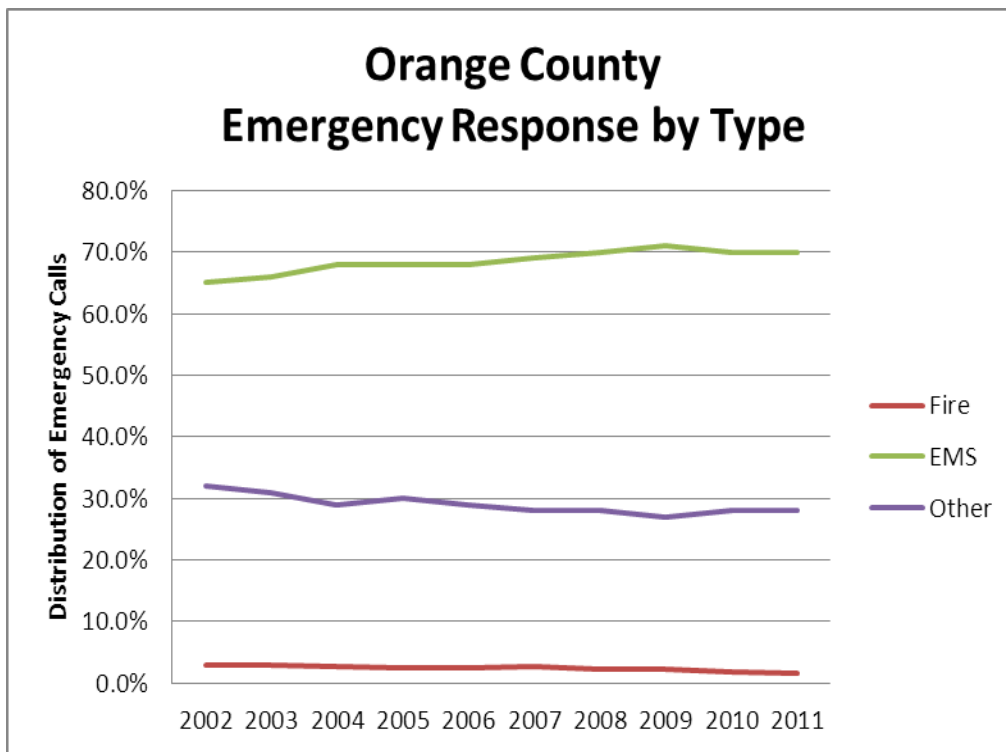
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<sup>1</sup> Wikipedia, the free encyclopedia; *9-1-1*; 3/15/2012

typical emergency response model has both fire and medical emergencies covered by the fire departments. However, not all fire departments follow that model. Some cities contract the medical emergencies to private ambulance companies. Some provide both in-house and contracted ambulance service.

Today more than 70 percent of all non-police/fire emergency calls are for medical purposes. However, some city fire departments report more than 80 percent of their calls are for medical emergencies.<sup>2</sup> Of the 180,000 incidents reported in Orange County in 2010 by the various fire departments, approximately 134,000 (76%) were for medical emergencies and 44,000 (24%) were for fires and “other.”<sup>3</sup> The Orange County Fire Authority alone reported less than two percent of their 88,227 responses were for “Fire/Explosion.”<sup>4</sup> The relationship of the various responses of only the Orange County Fire Authority is illustrated in Figure No. 1. The “Other” includes “ruptures,” “hazmat,” “service calls,” “good intent,” “false alarms” and “natural disasters.”

**Figure No. 1 - Responses of the OCFA for the Past Ten Years**



### Current Emergency Medical Procedures

<sup>2</sup> Grand Jury communications with the various agencies.

<sup>3</sup> Web sites of eleven Orange County fire departments; 2010; Nov. 2011

<sup>4</sup> OCFA; *Comprehensive Annual Financial Report, FY 2010-2011*

Most fire departments now respond to traffic collisions, hazardous materials spills, remote rescues, medical aid calls and various other emergencies. The typical emergency responses include a fire truck and an ambulance. The staffing of the OCFA emergency equipment is specified by their Memorandum of Understanding that states:<sup>5</sup>

1. *Each single-piece engine company shall have a minimum of three (3) personnel.*
2. *Each paramedic engine company shall have a minimum of four (4) personnel... Each truck company or urban search and rescue vehicle shall have a minimum of four (4) personnel...*
3. *Each paramedic van shall have a minimum of two (2) paramedic personnel.*

The qualifications of the responders depend upon the contract obligations they have with the city and the standards set by the State Emergency Medical Services Authority, the Orange County Emergency Medical Services Agency, and the OCFA.

The response time standard used by the OCTA is arriving in 7 minutes 20 seconds occurring 80 percent of the time.<sup>6</sup> The independent city fire departments have other response time standards. These depend upon the geography and the density of the community. Some city fire chiefs reported that depending on variables, the medical emergencies account for 80 to 85 percent of their calls with the response times of 5 minutes 90 percent of the time.<sup>7</sup>

Emergency medical qualifications and protocols, not the operations model, are governed and standardized by the Orange County Health Care Agency. These functions are assigned to the Orange County Health Disaster Management Department, Emergency Medical Services (OCEMS). This agency is staffed with a medical doctor as the director and a registered nurse as the program manager. Emergency Medical Services is guided by the 17 member Emergency Medical Committee, comprised of appointed members with background in health care.

OCEMS prescribes the standards for initial training and certification of emergency medical technicians (EMTs) and paramedics. OCEMS either provides or delegates (in the case of OCFA) oversight of the administration of emergency medicine certification.<sup>8</sup> All fire departments, private ambulance companies, and hospitals are required to meet the same standards. OCEMS does not prescribe the delivery service, which is left to the fire departments.

OCEMS also monitors and validates all emergency treatment facilities and monitors facilities for special capabilities. All treatment administered by emergency medical personnel, from either private companies or local fire departments use the same Standing Orders and Protocols set forth by the Health Care Agency.<sup>9</sup>

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<sup>5</sup> OCFA & OCPFA; *Memorandum of Understanding Relating to Employees in the Firefighter Representation Unit*; July 1, 2000, amended 2001, 2002, 2006, 2010

<sup>6</sup> No national standard exists. Regions adopt those standards that fit their budgets balanced against their health and safety risks.

<sup>7</sup> Orange County Grand Jury communications with local fire chiefs.

<sup>8</sup> Orange County Emergency Medical Services; *EMS Policies*; 12-22-11

<sup>9</sup> *Ibid*,

The Orange County Board of Supervisors, upon advice of the Orange County Emergency Medical System (OCEMS), sets maximum rates for Advanced Life Support (ALS) and Basic Life Support (BLS). Cities take into consideration these rates when putting together Requests for Proposal and Invitation to Bid on ambulance transport services with private providers. Although the process is said to be competitive, meaning the award goes to the “most responsive and responsible bidder,” all ambulance providers are under the oversight of OCEMS that administers and certifies the medical protocols (i.e., licensing). Further, the Orange County Board of Supervisors sets the maximum rates. These requirements limit the number of potential qualified bidders.

Several of the cities contract their medical emergencies to local private ambulance companies. Other cities either have OCFA or a combination of OCFA and private ambulance services providing emergency medical response to their citizens.

Currently, private ambulance companies are awarded long-term service contracts for up to ten years.<sup>10</sup> Fees are based on the rates set by Orange County Health Care Agency, which are approved by the Board of Supervisors. Typically, these contracts have prequalification dictated by OCFA and at least experience in similar sized cities. Potential private ambulance companies find the contract proposals vague in their billing requirements.<sup>11</sup>

### **Current Emergency Response Operations**

Chiefs of the various fire departments of Orange County were interviewed by the 2011-2012 Orange County Grand Jury. All were relatively new in their position, some having been recently appointed, and some sitting in an interim capacity.<sup>12</sup> All appeared to have been given the challenge of looking at their organization and proposing alternative ways of providing their services.

A problem that faces all of these agencies is financial. The labor agreements adopted in good times have become financial burdens during the recent business downturn. These burdens not only affect the current but also future budgets. In most departments, the costs of the long-term benefits are not transparent to the boards of directors, city councils, and the public, consequently the challenge that the governing bodies have given to the new fire chiefs.

Personnel from one Orange County private ambulance company and one former ambulance company owner were interviewed by the 2011-2012 Orange County Grand Jury. The local ambulance company contracts with several Orange County fire departments to provide emergency medical service. These contracts are a result of requests for proposals from the cities and are open to competitive bidding. Some city fire departments provide “home” for these private ambulance companies in the local fire stations. Other cities allow the ambulances to be

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<sup>10</sup> Telephone conversations with various OC fire departments

<sup>11</sup> Grand Jury conversations with city fire departments, and private ambulance companies.

<sup>12</sup> Ibid.

housed wherever the private company determines to be a strategic location. In most areas, the fire departments dispatch the fire trucks at the same time that the private ambulances are dispatched. Private ambulance services are now required to have radio systems on the 800MHZ band for uniform communications with all surrounding fire departments and ambulances.

In the 1960's and 1970's, private ambulance companies were the predominant providers of emergency medical services. This changed at the onset of the "9-1-1" phone dial when emergency medical responses began to be taken over by the fire departments.<sup>13</sup>

Local labor union leaders note that the greatest challenge facing them today is "an increasing demand for services with fewer personnel while competing for limited funding resources."<sup>14</sup> They go on to say "unscrupulous private vendors" are trying to profit from current financial difficulties.

## **FINDINGS/CONCLUSIONS**

In accordance with *California Penal Code* §933 and §933.05, the 2011-2012 Orange County Grand Jury requires responses from each agency affected by the **Findings/Conclusions** presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court. The Board of Directors of the OCFA and the City Councils of each city fire department shall respond to these **Findings/Conclusions**.

Based on its study of the OCFA, the 2011-2012 Orange County Grand Jury makes the following **Findings/Conclusions**

**F1.** Fire departments that once primarily responded to calls for fire emergencies now have become emergency medical response departments primarily responding to medical emergencies. This evolution has occurred since the onset of "9-1-1" call where all emergency calls are received at one place.

**F2.** As the fire departments evolved into emergency medical departments, the model for operating the fire departments has not radically changed. The fire departments have simply absorbed the emergency medical responses into their departments under their old "fire response" model.

**F3.** Economic recessions have forced local fire department boards of directors and city councils to re-evaluate their models for providing fire and emergency medical responses. While this brings to the fore issues of staffing, response times, public safety, training, consolidations, union rules and privatization of their various services, it also spotlights the model used for all emergency responses.

## **RECOMMENDATIONS**

In accordance with *California Penal Code* §933 and §933.05, the 2011-2012 Orange County Grand Jury requires responses from each agency affected by the **Recommendations** presented

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<sup>13</sup> Grand Jury conversation with a former owner of a private ambulance company.

<sup>14</sup> Kerr, Joseph V.; *Major Problems Facing firefighters in Today's Labor Movement*; Grand Jury correspondence ; 3-20-12

in this section. The responses are to be submitted to the Presiding Judge of the Superior Court. The Board of Directors of the OCFA and the City Councils of each city fire department shall respond to these **Recommendations**.

Based on its investigation of emergency response models in Orange County, the 2011-2012 Orange County Grand Jury makes the following recommendations:

**R1.** The city fire departments and the Orange County Fire Authority should engage independent private consultants to re-evaluate their models for providing response for both fire and medical emergencies. These re-evaluations should include the strengths, weaknesses, opportunities and threats of current models and alternative models. This re-evaluation should be accomplished by July 31, 2013. (See F1, F2 & F3)

**R2.** Suggested alternative models should include forming a unified Emergency Response Department that includes fire and medical response, separating the fire response from the medical response, privatizing the emergency medical response, etc. (See F3)

## **REQUIRED RESPONSES**

The Board of Directors of The OCFA and the City Councils with city fire departments shall respond to the **Findings/Conclusions** and the **Recommendations** as specified below. In accordance with *California Penal Code* §933 and §933.05, the 2011-2012 Orange County Grand Jury requires responses from each agency affected by the **Findings/Conclusions** and **Recommendations** presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

*“Not later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to §914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations...”*

The Penal Code lists the following response choices for a responding entity:

### **Responses to Findings**

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 in dispute and shall include an explanation of the reason.

**Responses to Recommendations**

1. The recommendation has been implemented, with a summary regarding the implemented action.
2. The recommendation has not been implemented, but will be implemented in the future, with a timeframe for implementation.
3. The recommendation requires further analysis, with an explanation of the scope and parameters of that analysis and timeframe. This timeframe shall not exceed six months from the date of publication of the Grand Jury report.
4. The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation.

All responses should be received no later than October 1 (unless the agency or department has requested in writing an additional extension). Follow-up is the responsibility of the sitting Grand Jury.

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OC EMERGENCY MEDICAL SERVICES

**EMERGENCY MEDICAL RESPONSE  
IN  
ORANGE COUNTY**



**GRAND JURY 2011-2012**

2011/2012 ORANGE COUNTY GRAND JURY

## **CAN THE CONSUMER PRICE INDEX-URBAN KEEP UP WITH OCFA WAGES?**

### **SUMMARY**

The 2011-2012 Orange County Grand Jury studied the cost of labor in the Orange County Fire Authority (OCFA). The OCFA was very cordial in working with the Grand Jury by providing their documents and readily answering myriad questions.

This Grand Jury found that over the past seventeen years the OCFA labor costs ranged from 75 to 81 percent of the total annual budgets. The cost of labor grew approximately 8.6 times faster than the growth of the staff, and 3.0 times faster than the Consumer Price Index-Urban. Recent labor agreements introduced a “trigger formula” that may modify these trends.

Consequently, the 2011-2012 Grand Jury recommends that the OCFA explain to the public these apparent growth differentials and what, if anything should be done to bring them in line with actual economic conditions. Furthermore, the OCFA should evaluate the long-term consequences of their past agreements that have led to these disparities, and they should develop and implement both short and long-range plans to moderate and avoid potential increases in taxes and/or fees, and potential decreases in services.

### **PURPOSE**

The 2011-2012 Orange County Grand Jury studied the Orange County Fire Authority (OCFA) to learn more about its past expenses, its current finances, and its future expenditures. OCFA had previously been studied by the 1995-1996 Grand Jury shortly after evolution of the Orange County Fire Department into the Orange County Fire Authority. That earlier study concluded that the key issue was apparent inequity between the “membership” costs to the cities that it served. Now, after seventeen years, the current Grand Jury looked at the OCFA as it exists today. The 2011-2012 Grand Jury studied only the financial aspect of the organization, focusing on the labor costs.

### **METHODOLOGY**

The 2011-2012 Orange County Grand Jury performed the following tasks to develop this study:

- Collected and reviewed the OCFA financial documents;
- Interviewed selected members of the OCFA executive staff and several firefighters;
- Interviewed selected members of the Board of Directors;
- Reviewed the Memorandum of Understanding between the OCFA and the firefighters;
- Compiled financial records from the Bureau of Labor Statistics and the County of Orange; and
- Prepared this report with its Findings/Conclusions and Recommendations.

## BACKGROUND

The Orange County Fire Authority, a Joint Powers Agency, was formed in 1995 as an outgrowth of the Orange County Fire Department and the Orange County bankruptcy. At its inception, the OCFA absorbed the old county fire department and 15 of the cities that it had served. In addition, four more cities, mostly newly incorporated, were added as contract cities. Over the following sixteen years, five more cities, again some old and some newly incorporated, joined the fire authority. Up to 2011, the OCFA served the county areas and 22 local cities. The other 12 cities had their own fire departments. In 2012, another city merged their independent fire department into the OCFA making 23 the cities serviced along with the unincorporated parts of the county.

The OCFA is governed by a Board of Directors made up of a representative from each of the 23 cities and two representatives from the County Board of Supervisors. The city representatives are appointed by their city councils that usually consist of five City Councilmen. Their terms of office vary, some being as short as one year. The two members from the Board of Supervisors rotate on an annual basis. The Board of Directors meets six times a year and considers agenda items submitted by the OCFA staff. In the past year, agenda items have included such topics as pensions, bond review, retirement system updates, possible litigation, purchasing order reviews, and extension of MOU with unions.

## FACTS

Fact: The OCFA is currently funded primarily by three major sources: an allocation by the County Auditor/Controller from the 1% secured property tax, fees from contracts with cities that are served (Cash Cities), and agreements with the cities that were originally included in the start-up of the OCFA (Structure Cities). The current budget is \$282,000,000 and the current staff is 1,176.<sup>1</sup>

Fact: The primary revenue source of OCFA is based on the taxes generated from the assessed value of the properties served. Since 1995, the assessed values have increased from \$81 billion to \$210 billion, a cumulative increase of 159 percent over 17 years.

Fact: From 1995 to 2011, the annual budget grew from \$115,000,000 to \$283,000,000, a cumulative increase of 146 percent over those 17 years, and an average growth of 6.1 percent per year. See the table in Appendix A at the back of this report for the actual data compiled during this study.

Fact: From 1995 to 2011, the OCFA staffing grew from 1,008 employees in 1995 to 1,176 in 2012, a cumulative increase of only 17 percent, and an average rate of growth of 0.9 percent per year.<sup>2</sup>

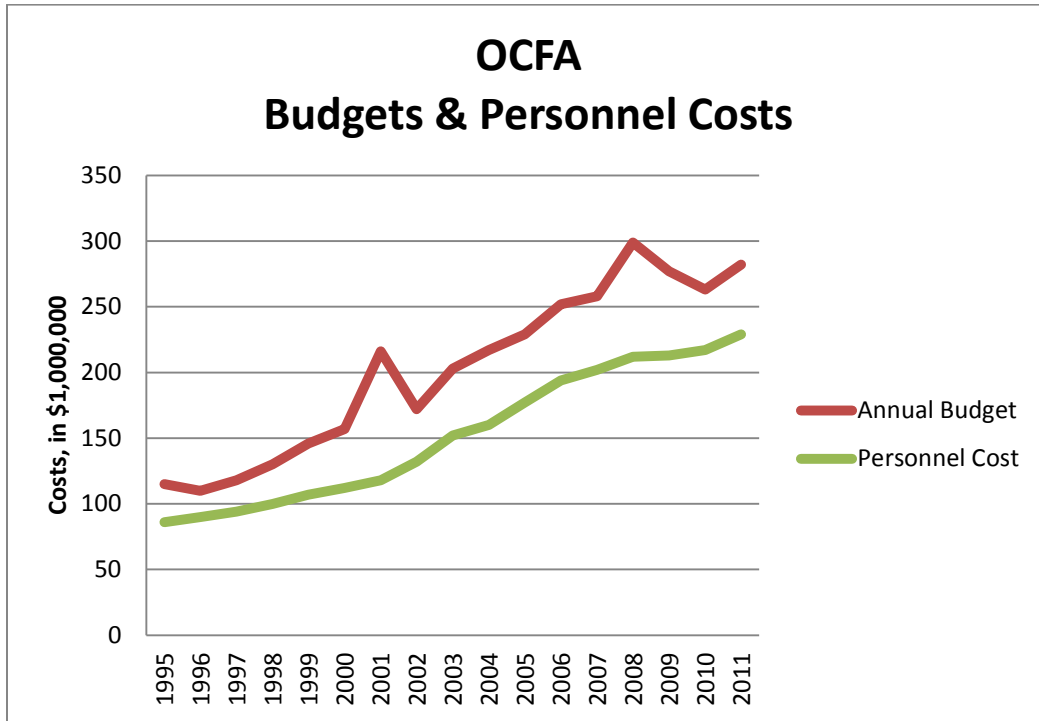
Fact: The labor costs, not including benefits, were found to vary over the years from 75 percent in 1995 to 81 percent in 2012 of the annual budgets. This relationship is shown in Figure 1.

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<sup>1</sup> OCFA; *2011-2012 Annual Budget and OCFA correspondence with the OCGJ*

<sup>2</sup> OCFA; *Annual Budgets*, 1996-2012

Figure No. 1 – Relationship between Personnel Costs and Budgets



**ANALYSIS**

The labor costs are dictated by the agreements made between the OCFA and the labor unions. The current agreement was consummated in 2000 and subsequently amended several times.<sup>3</sup> It called for salary increases of four percent for each year up to 2006.

After the first six years, the salary increases were three percent through 2012. From 2013 to 2015 any salary increases would be based on “methodology,” or “trigger formula,” tied to “actual ‘Secured Property Tax’ dollar amount” and any “General Fund Surplus/(Deficit)” that may occur. If the General Fund Surplus/(Deficit) is “less than or equal to five (5) percent of General Fund Expenditures, no salary adjustments will be implemented.” If the General fund Surplus/(Deficit) is “greater than five (5) percent of the General Fund Expenditures, the Authority will distribute the amount in excess of the five (5) percent fund in the form of a salary adjustment, not to exceed five (5) percent.”<sup>4</sup>

Furthermore, the Intent of Compensation Policy-Labor Market Adjustment is to maintain salaries “at the average of the top quarter (top three [3]) of non-Authority Fire Departments in Orange County.”<sup>5</sup>

<sup>3</sup> OCFA & OCPFA; *Memorandum of Understanding Relating to Employees in the Firefighter Representation Unit*; MOU; July 2000, amended 2001, 2002, 2006, & 2010

<sup>4</sup> OCFA & OCPFA; MOU; Art. XXIV. Sec. 1, A-O

<sup>5</sup> Ibid; Art. XXIV Sec. 1. P

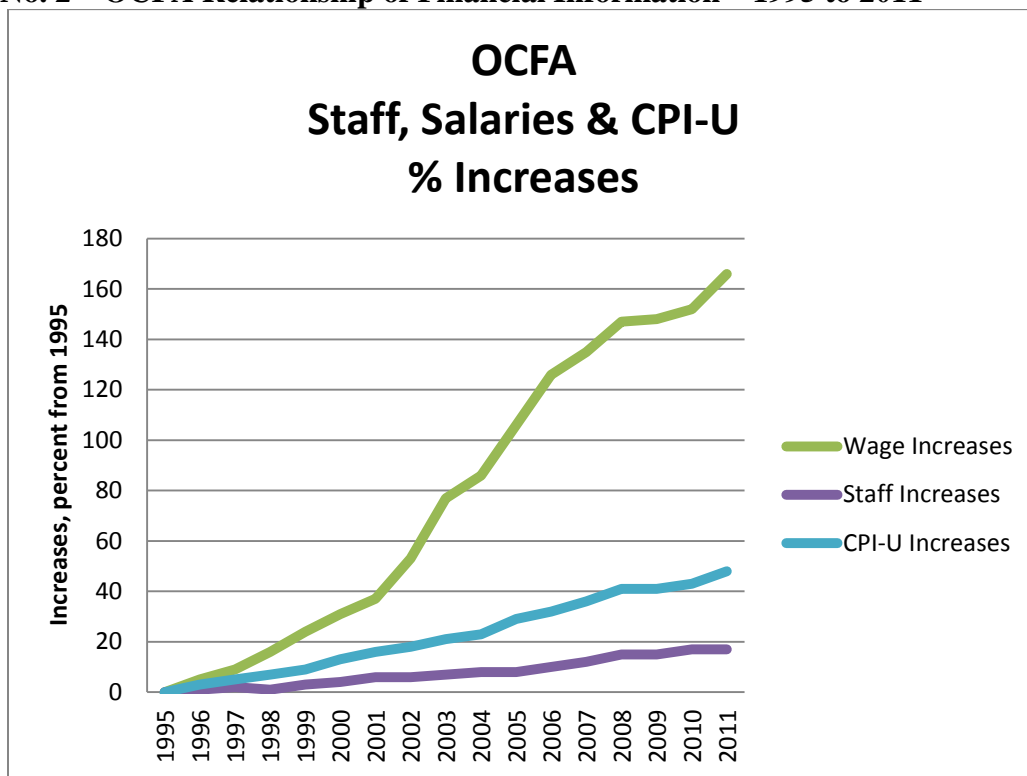
During the past 17 years of the OCFA, the Consumer Price Index for All Urban Consumers (CPI-U) showed the CPI-U rising from 152.49 in 1996 to 224.9 in 2011, a cumulative increase of 48 percent, and an average increase of 2.3 percent per year.<sup>6</sup>

During the past ten years, the County of Orange “Position Count” rose from 16,416 in 2000 to 17,210 positions in 2012, a cumulative increase of just 8 percent over 13 years and an average increase of 0.7 percent per year. The salary and benefit cost rose from \$1,124 billion in 2000 to \$1,787 billion in 2012, for a cumulative increase of 70 percent over 13 years, and an average increase of 5.1 percent.

Interviews with OCFA officials revealed that recently several thousand applicants have been applying for only a handful of positions.

A graphic illustration of the changes in the OCFA wages, staffing and Consumer Price Index-Urban are shown in Figure No. 2. This illustration shows the dramatic deviation between the finances of the OCFA and the CPI-U. The average increases since 1995 of the salaries is 6.0 percent compared to the CPI-U that grew at only 2.3 percent.

**Figure No. 2 – OCFA Relationship of Financial Information – 1995 to 2011**



<sup>6</sup> US Bureau of Labor Statistics; *CPI Detailed Report*; March 2012

## FINDINGS/CONCLUSIONS

In accordance with *California Penal Code* §933 and §933.05, the 2011-2012 Orange County Grand Jury requires responses from each agency affected by the **Findings/Conclusions** presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its study of the Orange County Fire Authority, the 2011-2012 Orange County Grand Jury makes the following **Findings/Conclusions**:

**F1.** The costs of labor of the OCFA, excluding benefits, are growing annually almost ten times faster than the increase of personnel and 3.5 faster than the Consumer Price Index-U.

**F2.** Labor agreements of the past have included salary increases of 3 and 4 percent per year while the cost of living represented by the Consumer Price Index-Urban have averaged slightly more than 2.3 percent per year. Future wage increases are based on a “trigger formula” that is tied to the “secured property tax dollar amount” and any “General Fund Surplus/Deficit,” and the average of the top quarter of neighboring non-Authority fire departments.

**F3.** Basing firefighter’s salaries to the “secured property tax” that are founded primarily on the assessed value of the property served may not be the most economically responsive (or seemingly rational to the public) method of calculating wages from a taxpayer perspective. This method produces salaries that do not appear to be compatible with actual wages within the communities they serve. Furthermore, basing salaries on those of neighboring firefighters can result in “spiraling” increases if those agencies base their wages on those of OCFA.

**F4.** Labor agreements for the firefighters that do not appear to reflect the overall economy and finances of the taxpayers and cities they serve may show a deficiency of civic duty of the Directors in making the tough choices and balancing the needs of the citizens that they serve.

**F5.** The terms of office of the Board of Directors (some of which are only a year) appear to be too short for directors to become thoroughly acquainted with the complex operations and finances of this large agency.

## RECOMMENDATIONS

In accordance with *California Penal Code* §933 and §933.05, the 2011-2012 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 study of the Orange County Fire Authority, the 2011-2012 Orange County Grand Jury makes the following recommendations:

**R1.** The OCFA should state on their website how firefighter's salaries are based in the past on the OCFA revenue, and currently on the OCFA general fund surplus/deficit rather than on the living costs and financial conditions of the cities and citizens they serve.

**R2.** Prior to entering into or negotiating any labor agreements, the OCFA Board of Directors should ensure that the law of supply and demand or the overall economic health of the communities that they serve is reflected in the salaries and benefits packages. Preferably, methods in determining salaries and benefits, among others, might include:

- Relating salaries and benefits to what the market will bear, i.e., high applications numbers for a job would usually lead to offering lower salaries and benefits;
- Tying salaries and benefits to local economic indexes that reflect the economies of the community served.

**R3.** OCFA salaries should be renegotiated annually to reflect the actual economic trends of those citizens they serve as opposed to entering into labor agreement that project salary and benefit increases too far in the future with set increases that do not reflect the unreliable economic volatile future.

**R4.** The OCFA Board of Directors should clarify and explain which part of the current Memorandum of Understanding controls: Article XXIV that sets annual increases through 2015, or the requirement of Article XXIX that requires compatibility with neighboring non-Authority fire departments, and explain the reasoning for that rationale. This should be included on OCFA's website under the Memorandum of Understanding.

**R5.** The OCFA Board of Directors should provide and make public both a short-term and long-term plan that brings the labor agreements in line with the living cost of the citizens they serve rather than solely upon the revenues derived from secured property tax of the property and city fees in their realm.

**R6.** If the growth of firefighter's salaries is reduced to reflect the economy of the citizens they serve, the OCFA should consider reducing the fees that they charge their contract cities to reflect the change and to be responsive to the financial realities of the cities.

**R7.** The OCFA should consider requiring the terms of office of the directors to be at least two years to provide longer time for continuity of the leadership.

## **REQUIRED RESPONSES**

In accordance with *California Penal Code* §933 and §933.05, the 2011-2012 Orange County Grand Jury requires responses from the **OCFA and the OCFA Board of Directors** to the **Findings/Conclusions** and **Recommendations** presented in this section.

The responses are to be submitted to the Presiding Judge of the Superior Court.

*“Not later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section §914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and commendations...”*

The Penal Code lists the following response choices for a responding entity:

**Responses to Findings**

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**Responses to Recommendations**

1. The recommendation has been implemented, with a summary regarding the implemented action.
2. The recommendation has not been implemented, but will be implemented in the future, with a timeframe for implementation.
3. The recommendation requires further analysis, with an explanation of the scope and parameters of that analysis and timeframe. This timeframe shall not exceed six months from the date of publication of the Grand Jury report.
4. The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation.

All responses should be received no later than October 1 (unless the agency or department has requested in writing an additional extension). Follow-up is the responsibility of the sitting Grand Jury.

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ORANGE COUNTY FIRE AUTHORITY

**Appendix A  
Table of Data for the OCFA**

Year	OCFA Budget			OCFA Wages			OCFA Staff			CPI-Urban			Orange County Staff			Orange County Budget		
	OCFA Budget, \$ Millions	Annual % Increase	Cumulative Budget Increase, %	OCFA Wages, \$ Millions	Annual % Increase	Cumulative Wage Increase, %	OCFA Staff	Annual % Increase	Cumulative Staff Increase, %	CPE-U	Annual % Increase	Cumulative CPI-U growth, %	Orange County Staff	Annual % Increase	Cumulative Staff Increase, %	Orange County Budget, \$ Billions	Annual % Increase	Cumulative Budget Increase, %
1995	115	0	0	86	0	0%	1008	0%	0%	152.4	0%	0%						
1996	110	-4%	-4%	90	5%	5%	1022	1%	1%	156.9	3%	3%						
1997	118	7%	3%	94	4%	9%	1032	1%	2%	160.5	2%	5%						
1998	129	9%	12%	100	6%	16%	1022	-1%	1%	163	2%	7%						
1999	146	13%	27%	107	7%	24%	1035	1%	3%	166.6	2%	9%						
2000	156	7%	36%	113	6%	31%	1052	2%	4%	172.2	3%	13%						
2001	216	38%	88%	118	4%	37%	1064	1%	6%	177.1	3%	16%	16416	0.0%	0%	1.005	0.0%	0%
2002	172	-20%	50%	132	12%	53%	1064	0%	6%	179.9	2%	18%	17290	5.3%	5%	1.123	11.7%	12%
2003	203	18%	77%	152	15%	77%	1078	1%	7%	184	2%	21%	17741	2.6%	8%	1.222	8.8%	22%
2004	212	4%	84%	160	5%	86%	1090	1%	8%	186.9	2%	23%	17751	0.1%	8%	1.306	6.9%	30%
2005	229	8%	99%	177	11%	106%	1091	0%	8%	196.3	5%	29%	17597	-0.9%	7%	1.343	2.8%	34%
2006	252	10%	119%	194	10%	126%	1111	2%	10%	201.6	3%	32%	18029	2.5%	10%	1.399	4.2%	39%
2007	258	2%	124%	202	4%	135%	1127	1%	12%	207.3	3%	36%	18301	1.5%	11%	1.537	9.9%	53%
2008	298	16%	159%	212	5%	147%	1160	3%	15%	215.3	4%	41%	18748	2.4%	14%	1.691	10.0%	68%
2009	277	-7%	141%	213	0%	148%	1160	0%	15%	214.5	0%	41%	18668	-0.4%	14%	1.729	2.2%	72%
2010	263	-5%	129%	217	2%	152%	1180	2%	17%	218	2%	43%	17895	-4.1%	9%	1.671	-3.4%	66%
2011	283	8%	146%	229	6%	166%	1176	0%	17%	224.9	3%	48%	17655	-1.3%	8%	1.712	2.5%	70%
		6.1%			6.0%			0.9%			2.3%			0.7%			5.1%	

NESI / ASCON STUDY

**NESI/ASCON SITE STUDY:  
THE SAGA CONTINUES**



**GRAND JURY 2011-2012**

2011/2012 ORANGE COUNTY GRAND JURY

**NESI/SITE STUDY: THE SAGA CONTINUES**

*"And so it goes." Vonnegut, Kurt. SlaughterHouse Five, passim.*

**SUMMARY**

This report constitutes a follow-up study by the sitting Orange County Grand Jury to the 1999-2000 Grand Jury's report, "Nesi/Ascon Site Study." That previous Grand Jury had studied a decades-old contaminated Huntington Beach toxic oil dumpsite that it found to have "insufficient protection against juvenile and/or adult intrusions . . . [and which] poses potential dangers to the health and safety of the community in which it is located."<sup>1</sup> The 1999-2000 Grand Jury found that Huntington Beach had not assumed the necessary "degree of responsibility [for] monitoring the site and that more and better monitoring" should be in place. Further, that Grand Jury urged the City of Huntington Beach "to pursue a more stringent policy of safety enforcement of appropriate regulations and rules pertinent to the toxic dangers facing the City."<sup>2</sup>

That Jury urged the Board of Supervisors to give the site a high priority and "use their positions to bring pressure on appropriate entities to deal with toxic clean-up," and in notes to the report recommended that a subsequent Grand Jury follow up the situation.

The 2011-2012 Grand Jury has obliged and has found that a major clean-up of the site is finally occurring in compliance with a 2003 Consent Order and Decree issued pursuant to State and Federal environmental laws. While Grand Jury members have been assured that money is not a problem,<sup>3</sup> this project is taking an inordinate amount of time to complete. The Order was issued in 2003; the final remedy—now in 2012—has not yet begun. The State "optimistically" contemplates that the project will be completed in 2015. Although the State is not within the purview of the Grand Jury, the 2011-2012 Grand Jury urges the Huntington Beach leadership to bring pressure on the appropriate entities to hasten the completion of effective and safe reclamation of this site, as well as to work with Orange County public health officials to further inquire into possible connections between the Nesi-Ascon site and physical and neurological complaints reported by neighborhood residents.

**REASON FOR STUDY**

The 2011-2012 Orange County Grand Jury determined that a follow-up to the Nesi-Ascon Site Study conducted by the Grand Jury 11 years ago was long overdue. The current Jury, therefore, conducted this study in order to report to the Orange County public on current circumstances and on the lead-up to what looks to be an effective, but agonizingly slow, clean-up.

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<sup>1</sup> 1999-2000 Orange County Grand Jury Final Report, "Nesi/Ascon Site Study," ET-1.

<sup>2</sup> Ibid, ET-6.

<sup>3</sup> The cost of the cleanup is being paid by the responsible oil companies.

The 1999-2000 Grand Jury had studied this 38-40 acre toxic dumpsite in Huntington Beach and determined, among other things, that the site posed “potential dangers to the health and safety of the community”; that, at the very least, adequate fencing should be installed quickly to protect the unwary; and that County and City ought to “bring pressure on the appropriate entity to deal with toxic clean-up and remediating (*sic*) this hazardous site.”<sup>4</sup> They recommended that “a permanent clean-up be expedited”<sup>5</sup> and that a subsequent Grand Jury perform a follow-up inquiry. The 2011-2012 Grand Jury answers that request. It has studied the history of the site and herein reports on the current status of the ongoing cleanup being performed in accordance with a 2003 Consent Order and Decree entered into by the California Department of Toxic Substances Control (DTSC) and seven oil companies.<sup>6</sup>

The plans for reclamation and the clean-up of this site have been in the works for many years, certainly for more years than anyone would have thought possible. Whatever the reasons, and many have been advanced, the work is now progressing, although painfully slowly. The Grand Jury is aware that with respect to environmental clean-ups, federal and state environmental laws mandate (1) publication and distribution of pertinent information and plans through Environmental Impact Reports (EIR) and Statements (EIS); and (2) specification of time periods allowed for comment by the public. However, the time involved in getting this notorious site cleaned up may very well seem excessive to many.

## **METHOD OF STUDY**

The 2011-2012 Grand Jury has examined the origins of the problem as well as the history of the site up to the present. Jury members interviewed officials of the DTSC, environmental lawyers, several Huntington Beach officials, newspaper reporters, realtors, a representative of the Responsible Parties, and OC Health Care Agency representatives as well as several area home owners. Diagrams and photographs of the subject site were studied. Jury representatives toured the site at the invitation of the DTSC. Federal and State statutes were examined, including the California Environmental Quality Act (CEQA).<sup>7</sup>

## **BACKGROUND**

### *History*

The Nesi-Ascon area,<sup>8</sup> located at Magnolia and Hamilton Avenues in southeast Huntington Beach, is a former dumpsite now euphemistically referred to as a “landfill” where industrial and oil field wastes were disposed of into surface impoundments euphemistically referred to as “lagoons.” The lagoons were surrounded by berms to contain waste materials.

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<sup>4</sup> 1999-2000 Grand Jury Final Report, ET-5.

<sup>5</sup> *Ibid* at ET-ii, ET-1.

<sup>6</sup> Atlantic Richfield, Chevron Environmental Management, Conoco Phillips, the Dow Chemical Company, Shell Oil, Southern California Edison, and Northrop Grumman Space & Mission Systems Corporation, referred to as Responsible Parties or “RP’s” in EPA parlance.

<sup>7</sup> California Environmental Quality Act, Sections 2100 *et seq.*

<sup>8</sup> The Site is named for two companies that made failed attempts to clean up the area.

The site was operated as an active dumpsite for oil drilling wastes from 1924 to 1984 into which were deposited drilling muds, wastewater brines, and other such material. Records indicate that from 1957 to 1971 chromic acid, sulfuric acid, aluminum slag, fuel oils, and styrene,<sup>9</sup> among other substances, were discarded. From 1971 to 1984 dumped material included inert solid wastes such as asphalt, concrete, metal, soil, and wood as well as other contaminants including abandoned vehicles.<sup>10</sup>

In 1989, the City of Huntington Beach consented to allowing the California DTSC to act as “lead agency” to clean up the site. Although measures were taken to attempt such a clean-up and studies undertaken to characterize the site with respect to soil and water characteristics as well as air quality, for various reasons failure followed failure.

Still another “clean-up” began again in 1992; that work was predicted to last about 18 months but was “taking longer than expected,” the Huntington Beach City Council was told.<sup>11</sup> Land developers who planned to build nearly 600 houses on the reclaimed site told the City Council that removal of toxics would continue through the Fall of 1995: “No construction on the land can begin until late 1995, at the earliest.”<sup>12</sup>

The site is still awaiting final reclamation in 2012.

### ***1999-2000 Grand Jury Findings***

The former Grand Jury found that the site had been accumulating, along with oil industry waste and building debris, among other things:

“. . . abandoned homeless campsites with attendant blackened fire pits and accumulated human trash. The real danger lies in the three 25-foot-deep oil/tar lagoons and a now covered styrene pit.”<sup>13</sup>

Further, the Jury noted the several less-than-satisfactory attempts made to limit access to and clean up the site by the City or by anyone else. The Jury expressed its impatience with city officials in Huntington Beach:

“The Grand Jury also wants to see stronger efforts to reduce the hazardous potential of this site. Meetings with city officials in Huntington Beach have left the Grand Jury with feelings of frustration summed up by the reaction: “we’re being stonewalled.” The Grand Jury has studied, visited, and overtly

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<sup>9</sup> Substances classified by the EPA as toxic wastes. Styrene is an odorous unsaturated hydrocarbon used in making synthetic rubber, resins, and plastics. The styrene pit alone was responsible for numerous complaints and costly Air Quality Management District citations in the 1980’s and 1990’s. The previous Jury reported that only after these citations and complaints were filed was the styrene pit covered with a plastic tarp to contain the noxious aroma of decomposing hydrocarbons. See, 1999-2000 Grand Jury Final Report, ET-2.

<sup>10</sup> Environment Fact Sheets, Nos. 7 and 8, 2003. These Fact Sheets were developed, published, and distributed to the public by the DTSC as one method of keeping interested persons informed as to the Consent Order clean-up.

<sup>11</sup> Bill Billiter, “Huntington Beach: Ascon Site Cleanup to Continue Until ’95,” Orange County *Focus*, October 7, 1992.

<sup>12</sup> *Ibid.*

<sup>13</sup> 1999-2000 Grand Jury Report, ET-2.

examined the site and its potentially hazardous dangers. The Grand Jury believes that not enough attention is being paid to the unsafe nature of the Nesi/Ascon waste site.”<sup>14</sup>

In 1989, the California DTSC, an agency under the California Environmental Protection Agency, had been named the lead agency for yet another cleanup attempt. This attempt resulted in several corporate failures, and again no successful clean-up operations took place. In 2000, an obviously disturbed Grand Jury cried out for the City to at least fix the perimeter fencing.

“The community and County should mount a more rigorous push to resolve and eliminate the dirty dangerous dump that is Nesi/Ascon. One would think that local pride and community service would have provided better results but instead, the prevailing reaction received by the Grand Jury has been the old ‘if it ain’t broke, don’t fix it.’ The Grand Jury feels that it is broke and wants it fenced and fixed.”<sup>15</sup>

The Jury found, among other things, that “The City of Huntington Beach does not assume the degree of responsibility for monitoring the Nesi-Ascon site that seems prudent to the Grand Jury.”<sup>16</sup>

In July 2000 the year-long term of the Grand Jury ended as did official inquiry into the site’s “potential dangers to the health and safety of the community in which it is located.”<sup>17</sup>

### ***The 2003 Consent Decree and its Aftermath***

Finally, in 2003, three years after the original Grand Jury report was published, the State of California, through the California Environmental Protection Agency’s DTSC, issued an “Imminent and Substantial Endangerment Determination and Order and Remedial Action Order” pursuant to California Health and Safety Code Sections 2355.5(a)(1)(B), 25358.3(a), 58009 and 56010, wherein a group of Responsible Parties (RPs) entered into a Consent Order<sup>18</sup> to clean and reclaim the site at their expense. The RP group consisted of Atlantic Richfield, Chevron Environmental Management, Conoco Phillips, the Dow Chemical Company, Shell Oil, Southern California Edison, and Northrop Grumman Space & Mission Systems Corporation, all of whom would be paying for the site investigation and clean-up. Additionally, DTSC issued a unilateral order to the property owner and Exxon Mobil Corporation to compel them to work with the officially-named RP’s.

A six-foot tall opaque fence was erected completely around the dump.

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<sup>14</sup> Ibid. “The Grand Jury also wants to see stronger efforts to reduce the hazardous potential of this site. Meetings with city officials in Huntington Beach have left the Grand Jury with feelings of frustration summed up by the reaction: “we-re being stonewalled. . . . The Grand Jury believes that not enough attention is being paid to the unsafe nature of the Nesi/Ascon waste site.”

A newspaper story by Nick Schou, in the Orange County Weekly, relayed the Jury’s feelings to the rest of Orange County.

<sup>15</sup> 1999-2000 Grand Jury Report, ET-3.

<sup>16</sup> Ibid at ET-5.

<sup>17</sup> Ibid at ET-1..

<sup>18</sup> Supra, p. 2, fn. 7.

Clean-up options were considered, and it was decided to implement an option which would remove and treat affected soils from the lagoons and pits and use clean soil for the final grade. It was estimated, in 2003, that this option would take “approximately three years for the main cleanup activities . . . .

“Upon final implementation, this option will eliminate or reduce the identified risks from the soil and physical conditions of the Site to acceptable levels, and it will be suitable for development as it is currently zoned [residential housing].”<sup>19</sup>

The Mayor of Huntington Beach, at the time, was quoted by the Orange County Register as saying, “I think the Ascon agreement is wonderful . . . I’m really glad the state stepped in to work with the responsible parties. I think it’s going to happen now.”<sup>20</sup>

A DTSC presentation regarding cleanup activities was made to the Huntington Beach Mayor and City Council on May 5, 2003. The Council was informed of the assessment of human and ecological risks including cancerous and non-cancerous hazardous effects.<sup>21</sup>

A full investigation of site groundwater (not a source of drinking water) was begun in 2004 wherein groundwater monitoring wells were placed inside site boundaries. Quarterly groundwater sampling and testing were performed with no adverse results reported.<sup>22</sup>

### ***The 2005 Emergency Action***

Owing to unusually heavy rains in Winter 2004 and Spring 2005, an “Emergency Action” was undertaken by the DTSC because authorities feared that rains might have weakened the 30-year-old earthen berms surrounding the lagoons; DTSC feared that future rains might cause the berms to leak or give way and would pose the danger of hazardous waste spilling into the street.<sup>23</sup> Emergency action consisted of, among other things, removal of about 28,000 cubic yards of waste from the lagoons, thereby lowering their level by about three feet, and hauling the waste offsite to an appropriate waste disposal facility; putting in a drainage system at the base of one of the berms; and reinforcing one of them with crushed concrete.

DTSC indicated that the action would not affect the final cleanup plans for the site.<sup>24</sup>

The perimeter of the site was reinforced and newly-fenced. Further, surface pits and lagoons were fenced and covered.

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<sup>19</sup> Fact Sheet 7, March 2003.

<sup>20</sup> Paul Clinton, “Cleanup Agreement Signed,” Orange County *Independent*, Jan. 17, 2003.

<sup>21</sup> Huntington Beach City Council notes.

<sup>22</sup> Groundwater Sampling Notes.

<sup>23</sup> Fact Sheet #10, October 2009.

<sup>24</sup> Fact Sheets #'s 9 and 10, September and October 2009.

### ***The Interim Removal Measure***

As of early December 2010, as an “interim removal measure,” about 58,000 tons of tarry materials and firming additive were removed from two lagoons and disposed of at a designated disposal facility.<sup>25</sup> The purpose of this action was to enable assessment of materials underneath the tarry substances in two of the lagoons. Field work was anticipated to begin the first half of 2010 and continue for about eight months. Materials of unknown size and composition were noted in and under the lagoons. DTSC announced that a more complete assessment of Lagoons One and Two would allow for an informed remedial construction effort during the final remedy in a manner that was protective of public health and the environment.

The agency reported that the interim removal action was actually completed in March 2011 and that information collected would be incorporated into planning for its final cleanup. The final cleanup plan, called the Remedial Action Plan (RAP):

- Will be available for public review and comment in the future.
- DTSC anticipates issuing a Notice of Preparation . . . and initial Study for a draft EIR [Environmental Impact Report], required [under CEQA] in 2012.<sup>26</sup>

### ***Final Plans***

The DTSC now [in 2012] reports:<sup>27</sup>

1. “New” completion dates, according to the Environmental Impact Report, will be targeted for two years hence, “perhaps in the Fall of 2014 or Spring of 2015.” The Remedial Action Plan will be in effect, “running simultaneously”;
2. Lagoons #1 and #2 need not be capped and lined because they are free of any toxic material;
3. The other lagoons will be lined and capped;
4. When all lagoons are free of toxic waste, new soil will be imported;
5. Aside from the greenery along the perimeter of the property, the land will be free of all plant life;
6. The post-reclamation site could not be used for housing, hospitals, and schools;
7. The site could be used for a park, golf course, parking lot or other non-residential purposes;
8. No final design is as yet available and will not be available until after the Revised Action Plan is approved.

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<sup>25</sup> Fact Sheet #11, November 2010.

<sup>26</sup> Fact Sheet #12, December 2010.

<sup>27</sup> Phone conversation with DTSC officials Greg Holmes and Safou Sayed.

## ANALYSIS

### Interviews

Most of the Huntington Beach City Council did not return our repeated calls and requests for *individual* interviews.<sup>28</sup>

However, members of the 2011-2012 Grand Jury did manage to speak individually with three city council members. One council member felt that the DTSC was taking overly long in its decision-making and reclamation oversight of the area but that there had been little concern voiced at the City Council and few complaints from the community. However, several council members expressed the feeling that a current Grand Jury update report might facilitate a “speeding-up” of the final reclamation.

According to one member, the only recent complaints the Council received from the surrounding neighborhood had been during the 2011 clean-up. A few complaints had been voiced by owners of homes surrounding the dump concerning the dust being kicked up over their neighborhood. Further, this Council member felt that whenever the full-scale final remedy is initiated, he is sure the number of trucks going and coming from the dump site will cause daily complaints from the nearby residents, and those complainants will want it to stop.

There is a small nucleus of community activists in the neighborhood, one of whom vividly described to several current Jury members pre-Consent Decree episodes and conditions.<sup>29</sup> He, as well as other home owners, believe there is a connection between the toxicity of the dump and neighborhood health disorders, both physical and neurological. Several neighbors have kept track of “numbers of people” with neurological disorders.

Orange County public health officers were invited to address members of the current Jury; however, they basically summarized the results of their investigations as statistically negative with regard to a link between the dump and reported neighborhood illnesses. Clearly, statistical reports have not quieted fears of some residents who continue to believe there is a link between health issues and the dumpsite. A letter from a University of Southern California Medical School professor to a Huntington Beach resident regarding her concern over brain stem malignancy in south Huntington Beach children expressed the following: although twice as many childhood brain stem cancers as expected occurred in that neighborhood, none of the cases resided, at the time of diagnoses, within one-half mile of the dumpsite and only one residence

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<sup>28</sup>It should be noted that after three weeks of leaving unreturned messages for individual City Council members, the Jury finally received, via an administrative assistant, the Council’s “offer” to hold a group telephone conference, an offer the Jury refused.

The Grand Jury wished to speak individually to city leaders with respect to their unique backgrounds, environmental interest and/or knowledge, familiarity with the dumpsite history and problems, possible conflicts of interest, and their individual views with respect to reclamation and post-reclamation plans. Current Jury members felt much like “stonewalled” members of the 1999-2000 Grand Jury. “Meetings with city officials in Huntington Beach have left the Grand Jury with feelings of frustration summed up by the reaction: “we’re being stonewalled.” “Nesi-Ascon Site Study,” Final Report ET-1. See, also Nic Schou, “We’re Being Stonewalled,” Orange County Weekly.

While this Grand Jury is quite aware it had/has the legal authority and power to subpoena individual members of the Council to comply with its request to speak individually with Council members, it chose not to do so for a number of reasons beyond the scope of this report.

<sup>29</sup> Fires, unsafe conditions, trespassers, a dog trapped in one of the tar pits, etc.

was actually close to the site. However, with respect to such possible environmental exposure, “while such concerns are often raised, they almost never can be substantiated.”<sup>30</sup>

“ . . . only the persons living right next to the point of emission would be subjected to a high level of exposure . . . . doses of carcinogens historically emitted in California have been miniscule . . . such an emission has never been large enough to explain a measurable cluster of cases . . . . We are . . . left with no medical or biological explanation for either the overabundance of brain stem cancers in the children of South Huntington Beach or the deficit of the same malignancies in northern Huntington Beach.”<sup>31</sup>

While it is difficult to predict and comment on home values, particularly in these times of economic “downturn,” home prices in the neighborhood remain, approximately, in the \$300,000 to \$700,000 range. According to newspaper and realty reports, “equivalent” homes in other areas of the city would be \$50,000 to \$100,000 higher. However, it should be noted:

- (1) The Nesi-Ascon dumpsite is, itself, on the fringes of an industrial area, in the southeast section of the city, a location which ordinarily (even without Nesi-Ascon) would make homes in the area less desirable; but
- (2) The area is close to the beach and ocean, making a “house by the sea” attainable for those who normally would not be able to afford such a location in Huntington Beach.

Many residents bought homes in the area not knowing about Nesi-Ascon. One such home owner was quoted as saying, at the time of the signing of the Consent Decree in 2003, that when he bought his house in 1977 the site was merely some high mounds of dirt. “A lot of people bought not knowing there was a toxic waste dump there.”<sup>32</sup>

As noted above, prior to the advent of the DTSC clean-up, post-clean up land use of Nesi-Ascon, was slated to be housing. The City Council approved the land for 502 homes in 1992. That land use is still officially listed by the Huntington Beach Planning Commission.<sup>33</sup> However, members of the Jury have been informed by DTSC that the site could not safely physically sustain buildings (such as housing, businesses, and the like). Rather, contemplated post-cleanup land use is more likely to be something like a park or playing fields. Land use clearly will be part of future discussions through official documents<sup>34</sup> as well as public comments and public meetings required by CEQA and other statutes.

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<sup>30</sup> Letter from University of Southern California Medical School professor to Huntington Beach resident, dated Oct. 5, 2011, regarding concern over brain stem malignancies in south Huntington Beach children.

<sup>31</sup> Ibid.

<sup>32</sup> Jim Hinch, “Site Soon May Come Clean,” *Orange County Register*, January 9, 2003.

<sup>33</sup> *Orange County Independent*, January 17, 2003.

The *Orange County Register* reported on May 16, 2002., Section A2, May 16, 2002, concerning “the lure of the payoff: the tens of millions of dollars or more that could be made by developing some 500 homes on the 38-acre property. While this prize has hung there for years, . . . it becomes ever sweeter for a developer.”

<sup>34</sup> Environmental Impact Reports, Environmental Impact Statements, Revised Action Plans, Planning meetings, and the like.

## **CONCLUSION**

As a result of the Consent Decree and its required studies, the 2005 emergency action, and the completed interim removal measures, the 2011-2012 Grand Jury is pleased to report that, *finally*, substantial progress has been made in cleaning up almost a century's worth of toxic waste cesspools in the middle of an area surrounded, in great part, by a school, park, and residences.<sup>35</sup>

While progress has been made, it has been painfully slow, and, according to some residents, the lack of speed or feelings of urgency have perhaps been at the expense of the health of some in the nearby community. While the 2011-2012 Grand Jury understands the need for thoroughness and care as well as compliance with State and Federal law on the part of the DTSC and others playing a part in the Nesi-Ascon rehabilitation, it would urge Huntington Beach city officials and its citizens (in the words of our predecessor Jury) to "bring pressure on the appropriate entity"<sup>36</sup> to accelerate the clean-up and complete it once and for all.

## **FINDINGS**

In accordance with *California Penal Code* Sections 933 and 933.05, the 2011-2012 Grand Jury requires responses to all findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

**F1.** The subject area is a former dumpsite where industrial and oil field wastes were disposed of into surface impoundments;

**F2.** Numbers of unsuccessful efforts to clean up the site had been made from the early 1980's;

**F3.** The California Department of Toxic Substances Control (DTSC), an agency under the California Environmental Protection Agency, became lead clean-up agency in 1989;

**F4.** The 1999-2000 Grand Jury studied the problems of potential dangers to the health and safety of the community and recommended that the City of Huntington Beach pursue a more stringent policy of safety enforcement of the appropriate regulations and rules pertinent to the toxic dangers facing the City;

**F5.** The 1999-2000 Grand Jury found that the City of Huntington Beach did not assume the degree of responsibility for monitoring the Nesi/Ascon site that seemed prudent to that Grand Jury;

**F6.** A Consent Order and Decree was issued in 2003 by the State DTSC through which seven companies agreed to take on the task and expense of reclaiming the site;

**F7.** DTSC-driven "clean-up" began in 2003;

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<sup>35</sup> 1999-2000 Grand Jury Final Report, ET-1

<sup>36</sup> Ibid, ET-5. "[t]he City of Huntington Beach does not assume the degree of responsibility for monitoring the Nesi/Ascon site that seems prudent to the Grand Jury."

**F8.** Final remediation has still not been attained but is expected to be completed in 2015;

**F9.** “Clean-up” is taking an extraordinarily long time to achieve, far longer than originally contemplated.

**F10.** Some neighbors claim that there have been abnormally high numbers of physical and neurological illnesses in nearby housing owing to the toxicity of the site, although Public Health Agency statistics do not appear to bear this out. Such public health statistics have not calmed the fears of some local residents.

Responses to Findings 1 through 10 are requested from the City Council of Huntington Beach.

### **RECOMMENDATIONS**

In accordance with *California Penal Code* Sections 933 and 933.05, the 2011-2012 Grand Jury requires responses from the Huntington Beach City Council. The responses are to be submitted to the Presiding Judge of the Superior Court.

The 2011-2012 Orange County Grand Jury makes the following two recommendations:

**R1.** The Huntington Beach City Council should give the Nesi/Ascon site (now called the Ascon Landfill) a high priority and use their positions to bring pressure on the appropriate entities to hasten (in accordance with State law) the final effective reclamation of this site.

[See F1, F2, F3, F4, F5, F7, F8, F9]

**R2.** The Huntington Beach City Council in conjunction with the Orange County Health Agency (Public Health) should inquire into the possibility that health issues in the neighborhood of the dumpsite were caused or exacerbated by proximity to the site.

[See F1, F3, F4, F5, F7, F9, F10]

Responses to Recommendations 1 and 2 are required from the City Council of Huntington Beach, and a response to Recommendation 2 is requested from Orange County Health Agency (Public Health).

### **REQUIRED RESPONSES**

“In accordance with *California Penal Code* Sections 933 and 933.05, the 2011-2012 Grand Jury requires responses from each agency affected by the **Findings** and **Recommendations** presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

*“Not later than 90 days after the Grand Jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations . . .”*

Responses to Findings/Conclusions and Recommendations are required and requested from each member of the **City Council of Huntington Beach, the Huntington Beach Mayor, and the Huntington Beach City Manager. Orange County Health Agency is requested to respond to Recommendation 2.**

The Penal Code lists the following response choices for a responding entity:

**Responses to Findings**

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 in dispute and shall include an explanation of the reason.

**Responses to Recommendations**

1. The recommendation has not been implemented, but will be implemented in the future, with a timeframe for implementation.
2. The recommendation requires further analysis, with an explanation of the scope and parameters of that analysis and timeframe. This timeframe shall not exceed six months from the date of publication of the Grand Jury report.
3. The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation.

All responses should be received no later than October 1 (unless the agency or department has requested in writing an additional extension). Follow-up is the responsibility of the sitting Grand Jury.

DETENTION FACILITIES REPORT - PART I - ADULT

**DETENTION FACILITIES REPORT:  
PART I - ADULT**



**GRAND JURY 2011-2012**

2011/2012 ORANGE COUNTY GRAND JURY

## **DETENTION FACILITIES REPORT: PART I - ADULT**

### **SUMMARY**

In accordance with the requirements of the California Penal Code, the 2011-2012 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 detention facilities (jails) operated by the Orange County Sheriff's Department and selected cities. Part II covers the juvenile detention facilities operated by the Orange County Probation Department.

In October 2011, the California State Legislature introduced a new problem for local jails. Assembly Bill (AB) 109 ( Public Safety Realignment) requires a certain category of felony offender (considered non-serious) be sentenced to serve their time (up to three-years) in county jail rather than in state prison. While insufficient time has passed to understand the full impact of this change, the early indications are that the expected number of felons within this category has been underestimated and the number of AB 109 eligible inmates is approximately double the number expected. While the county jails in recent years have been operating at approximately 88% of capacity, it appears that is about to change. Closed units are being re-opened and jail expansion plans are being expedited.

This report also discusses some perceived organizational problems such as the lack of a fast-track career path for deputies and the possible improper organizational placement of the Office of Independent Review.

On the operational side, the Grand Jury has identified potential problem areas. These include:

- Inadequate video surveillance systems in some facilities;
- Abuses of the court ordered non-collect call system by selected inmates;
- Five jail deaths occurring in 2011-2012; and
- An escape from Theo Lacy jail.

As recently as 2006, the Orange County jails were in turmoil. The Sheriff-Coroner was indicted by a Federal Grand Jury on seven counts of public corruption and he subsequently retired. On October 5, 2006, inmates beat an inmate at the Theo Lacy facility to death. While this report will identify some perceived problems in the jails, the findings and recommendations are made with an awareness of where we have been and an appreciation of the significant progress made in the overall direction of the department with respect to jail operations.

## **PURPOSE OF 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 2011-2012 Grand Jury chose to focus primarily on the county operated facilities. This report covers the five jails that house adult inmates, operated by the Orange County Sheriff’s Department and selected local jails operated by cities. The four institutions housing juvenile offenders, operated by the Orange County Probation Department, are reviewed in the 2011-2012 Grand Jury report “Detention Facilities Report: Part II – Juvenile.”

## **METHOD OF STUDY**

To carry out the mandated inspection duty with respect to the county jails, the Grand Jury engaged in the following activities:

- Two visits to each of the facilities, one for an overview of the operations and the second for a more detailed inspection;
- Extensive interviews with the captains of each of the jail facilities;
- Review of each of the most recent inspection reports prepared by the California Standards Authority, the local fire authority and the health department;
- Interviews with and review of reports prepared by the Office of Independent Review pertaining to jail operations;
- Attendance at coroner’s hearings reviewing four of the five deaths of county jail inmates;
- Review of the district attorney’s investigations regarding the above deaths;
- Review of events reported by the local news media regarding county jail operations; and
- Review of the public safety realignment legislation (AB 109) that significantly alters the criminal justice system in California.

With respect to the local city jails, the Orange County Grand Jury engaged in the following activities:

- Reviewed the most recent inspection report prepared by the Corrections Standard Authority, the fire authority and the health department;
- Performed site visits, interviews and physical inspection of local jails operated by –
  - The City of Anaheim
  - The City of Buena Park
  - The City of Costa Mesa
  - The City of Fullerton
  - The City of Seal Beach
  - The City of Tustin

- The City of Westminster

## **BACKGROUND AND FACTS**

In 2006, only six years ago, the Orange County Sheriff's Department was in disarray. In October of that year, an inmate at Theo Lacy thought by other inmates to be a child molester, was brutally attacked by 11 inmates in one of the barracks dormitories, and was literally stomped to death. According to reports, the officer on duty in the control station was watching television and no other staff on duty was maintaining surveillance of what was known to be a "blind spot." Six years later, this incident is still playing out in the courts. The gravity of this event significantly contributed to the departure of the former Sheriff and led to the appointment and subsequent election of the current Sheriff.

Based on interviews with jail captains and supervisors, it appears that the culture in the department has substantially improved since 2006. Many changes were made in the management organizational structure, and command staff is periodically rotated to provide a fresh perspective to the various operations. During the interviews with jail commanders and supervisors, a consistent theme is the difference in the climate in the Orange County Sheriff's Department now as opposed to 2006. This is not to say that there are no problems; jails are volatile, dangerous places that test the best of the men and women working in these difficult, but very necessary, jobs.

## **County Jail Descriptions**

All jails under the jurisdiction of the Orange County Sheriff are classified by the Correctional Standards Authority as *Type II* facilities. This classification allows the jails to house unsentenced and sentenced inmates. Until the implementation of AB 109 (Prison Realignment) in October 2011, the city jails normally received prisoners with misdemeanor sentences of one-year or less. Effective October 1, 2011, however, the courts are required to sentence certain categories of felony prisoners to county jail, rather than state prison, for terms up to three years.

Most city-operated jails are either *Type I* or *Temporary Holding* facilities. The only exception is the City of Santa Ana which operates a *Type II* facility. *Type I* facilities may hold inmates for up to 96 hours after booking and may also (upon court order) detain sentenced inmates. Some cities use this feature to provide "inmate workers" that assist in the maintenance of the facility. These assignments are made on a voluntary basis. *Type I* jails may also provide beds to selected inmates on a "pay to stay" basis." These are generally low-risk inmates that have the means to pay a daily amount and choose to serve their time in a city jail rather than being placed in the general population of the county jail system. These inmates may be employed and can be released during the day for work purposes.

The most common city jail is classified as a “Temporary Holding Facility” and is used to house suspects for up to 24 hours pending appearance in court or transfer to a county jail facility.

### **Intake Release Center (IRC)**

Located in the Central Jail Complex in Santa Ana, this facility contains five maximum-security housing modules. In addition to housing and processing new bookings, the IRC houses a substantial number of unsentenced prisoners awaiting court hearings as well as those serving sentences. After the closure of the women’s jail in 2009, modular units at IRC were adapted for use in housing female prisoners at any classification level. At the end of 2011, approximately 270 out of 400 females were housed at the IRC. However, in April 2012 the women’s jail reopened and most female inmates were transferred to that facility.

### **Central Men’s Jail**

Also part of the Central Jail Complex (CJX), the Men’s Central Jail is a traditional style cellblock facility, housing both sentenced and unsentenced inmates. With its linear design, inmates can be moved for meals, visiting, or recreation individually, in small groups, or by mass movement. This facility shares the complex with the IRC and the women’s jail.

### **Central Women’s Jail**

The Women’s Jail is the third facility located in the Central Jail Complex (CJX). Because of the increase in jail population triggered by the public safety realignment legislation (AB 109), this facility was reopened in April 2012, and most female inmates formerly held in the Intake Release Center (IRC) were moved here. While most of the female inmates in the county jail system are housed in this facility, space is also available in the Intake Release Center (IRC) and at the James A. Musick facility.

### **Theo Lacy Facility**

Named in honor of a former sheriff of Orange County,<sup>1</sup> this facility was opened in 1960 on seven acres in the City of Orange. Originally intended to relieve overcrowding at Santa Ana’s Sycamore Street Jail, it housed 424 minimum-security inmates. Now, covering approximately 11 acres, the facility houses up to 3,111 inmates of all security classifications and requires a staff of approximately 440 sworn and professional staff members.

The facility has at least three construction styles. The original **minimum-security buildings** are now used for the ICE (Immigration and Customs Enforcement) detainees. These detainees are the responsibility of the federal government and are housed by the Sheriff’s Department on a contract basis.

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<sup>1</sup> Lacy, Theodore – second and fourth sheriff of Orange County – from 1890 to 1894 and 1899 to 1911

The next least secure styles are referred to as “**barracks housing.**” These are dormitory style housing areas with a total capacity of just under 600 inmates. This housing is intended for minimum security inmates however, one of these units was the scene of the aforementioned beating death of inmate John Chamberlain.

A more secure jail environment is found in the **module style** that houses inmates at all levels of security. A maximum of eight inmates are allowed to congregate at any one time, which helps to prevent the opportunity for large-scale disturbances.

**James A. Musick Facility**

Also named after a former Orange County Sheriff, the James A. Musick<sup>2</sup> jail facility provides custodial and rehabilitative programs for up to 1,250 adult male and female inmates. It is located on a 100-acre parcel known as “The Farm” in an unincorporated area near the cities of Irvine and Lake Forest. Originally opened in 1963, the facility held a maximum of 200 male inmates and was referred to as the “County Industrial Farm” or the “Honor Farm.” The housing capacity has now increased to 1,250 and includes women. All inmates at Musick are considered a low security risk. Inmates who have committed violent crimes or sex crimes are not eligible.

**ANALYSIS**

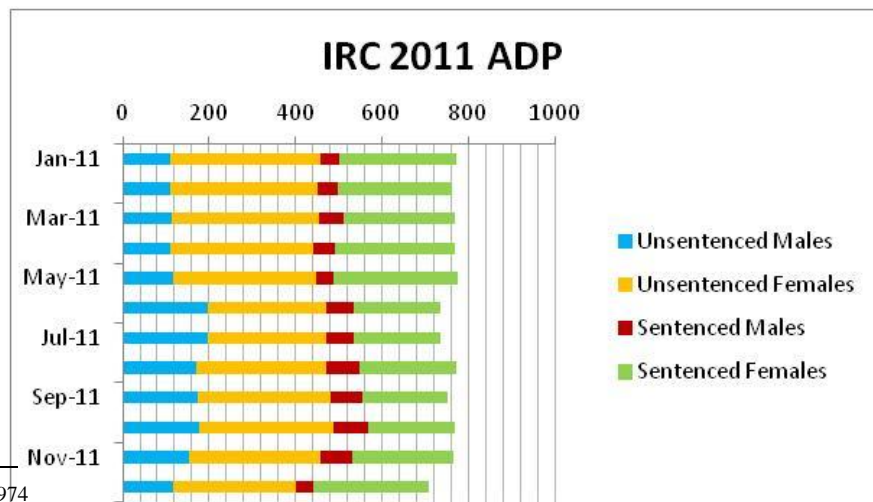
**Intake and Release Unit (IRC)**

Figure 1 shows the 2011 population of the IRC and the distribution between the sentenced and non-sentenced as well as male and female prisoners. During the closure of the women’s jail, most female inmates were housed at IRC. The following data are for the calendar year 2011. The distribution has now changed because of the recent opening of the Women’s Central Jail.

**Figure 1 – 2011 Average Daily Population IRC**

**Observations**

Part of the Central Jail Complex (CJX), the Intake Release Center (IRC), is one of the more volatile operations in the Orange County jail system. At this point, the custody process begins. New arrestees are brought to the center from



<sup>2</sup> Sheriff of Orange County from 1947 to 1974

the local jails or directly off the streets. Many have physical or mental health issues or are under the influence of drugs and/or alcohol. It is the responsibility of the Sheriff's custody staff and the Health Care practitioners to assess each prisoner admitted, provide medical care if indicated and classify inmates for the most appropriate housing in the county system. The most recent estimates place the number of bookings processed at this facility at approximately 66,000 each year.

The 2011-2012 Grand Jury has reviewed the reports from the District Attorney's Office investigating the circumstances of each of the four jail deaths that were subjects of the Coroner's Review on January 31, 2012. The cause of death in one of the four was suicide; the other three were natural causes aggravated by the excessive use of drugs and/or alcohol. These investigations have determined that there was no IRC staff culpability. In the instance of a woman who died from a stroke, there was a potential problem due to the unavailability of a deputy to escort the prisoner to the hospital. The paramedics, however, made the decision to not wait for an escort and rushed the inmate to the hospital without a significant loss of time. A fifth jail death was recently reported and is under investigation by the District Attorney's office and the Office of Independent Review.

### **IRC in the News**

Early in 2012, the Orange County Register reported an incident involving a female deputy and a male inmate allegedly engaging in a sexual relationship at the IRC. This matter is currently under internal investigation and further details are not available.

### **Inspection Results**

Noted during the inspection is that the IRC as well as the other facilities in the Central Jail Complex, do not have a modern, state-of-art video surveillance system. Systems in place are aging analog systems with poor quality and limited access for review.

A second observation at IRC is the general environment of the medical intake center. As one of the 2011-2012 Grand Jury members stated:

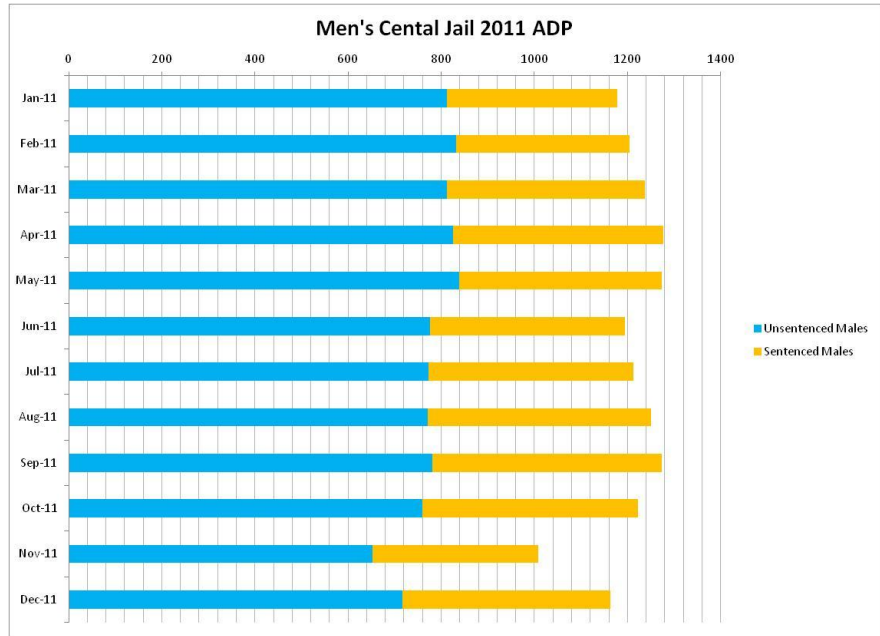
*“The immediate feeling when walking into the medical intake center at the IRC was one of abounding confusion. New inmates were literally ‘herded’ into the building and seated in a row on a long bench in front of the medical intake center. One by one, each potential inmate was called up to a window that had an open area. Each was asked a variety of personal health questions including information about sexually transmitted disease. All these questions, and all the responses, could be heard by any and all persons seated on the bench as well as the staff inside the workroom. Maintaining confidentiality was not an area of concern.”*

**Men’s Central Jail**

**Figure 2 – 2011 Average Daily Population Men’s Central Jail**

**Inspection Results**

An observation made at this facility that most likely applies equally to the other jail facilities regards the parallel phone systems. Inmates are allowed to make two types of calls: (1) collect calls through a self-supported system operated via a contract with an outside vendor, and (2) non-collect calls, made free of charge through the regular county phone system.



Collect calls are allowed only if made to a party willing to accept the charges or if the inmate has money “on-the-books” specifically designated for telephone calls. Collect calls are monitored by recording the conversations. The non-collect calls are allowed only by court order and are for the sole purpose of allowing confidential conversations between the inmate and his or her attorney. An estimated 20 percent of inmates have this privilege.

According to information provided by inmates, the non-collect call privilege is of great value among the inmate population, and it is sometimes exploited by the informal inmate leadership in order to facilitate unmonitored contact with the outside world. It has been reported that inmates have used the unmonitored phone system to arrange for assaults within the jails and to coordinate other criminal activities within the community. If this inmate information is accurate, the 2011-2012 Grand Jury considers non-collect call exploitation to be a serious threat to the security of staff, inmates, and community.

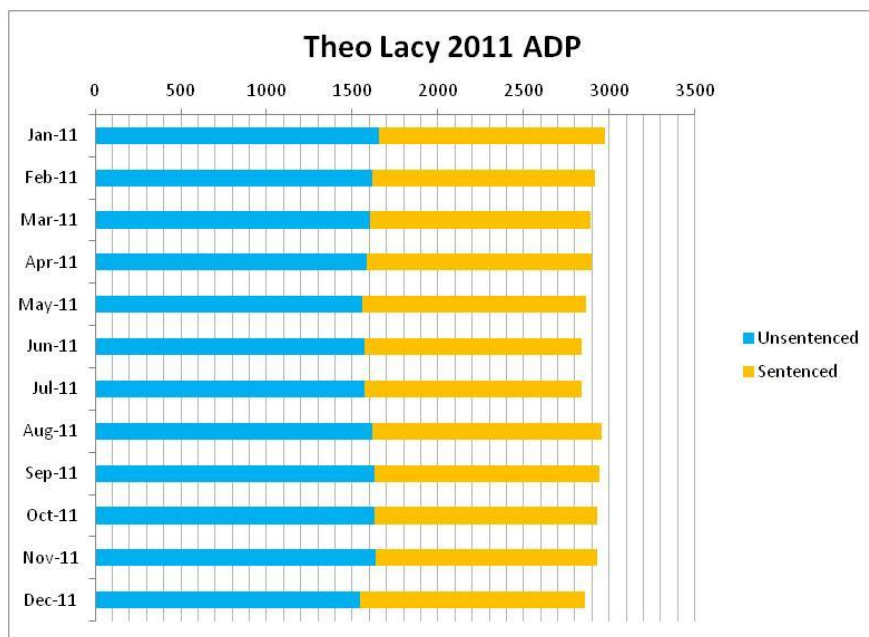
The Men’s Central Jail is the location of County Jail 1 (CJ1), a court facility capable of handling arraignment hearings and other matters on a daily basis. The location of this court reduces the need for the transporting of many inmates, thereby reducing costs and improving safety. As the population of the county jail system increases, a second court would be useful.

**Theo Lacy**

**Figure 3 – 2011 Average Daily Population**

**Observations**

A substantial portion of the Theo Lacy population consists of illegal immigrants detained at the request of the Immigration Control Enforcement (ICE). Since the federal government pays for these beds (“beds-for-feds”), the program has become a revenue producer for the Sheriff’s Department. Unfortunately, the increased demand for jail beds



resulting from the prison realignment legislation (AB 109) has the potential to significantly reduce the number of beds available.

**Inspection Results**

Just prior to the second visit to Theo Lacy by the Grand Jury, an escape occurred. Since an escape is a highly unusual event, the 2011-2012 Grand Jury inspection group reviewed the matter in some detail with the jail commander. The inmate who escaped was apprehended after a short absence and the security weakness exposed by the incident has been corrected.

It was at one of the barracks at Theo Lacy that the Chamberlain incident occurred. While the “blind spot” that existed in 2006 has been eliminated, these facilities remain a challenge for effective inmate supervision. Care must be exercised in classification and assignment of inmates to these units.

**Video Visitation**

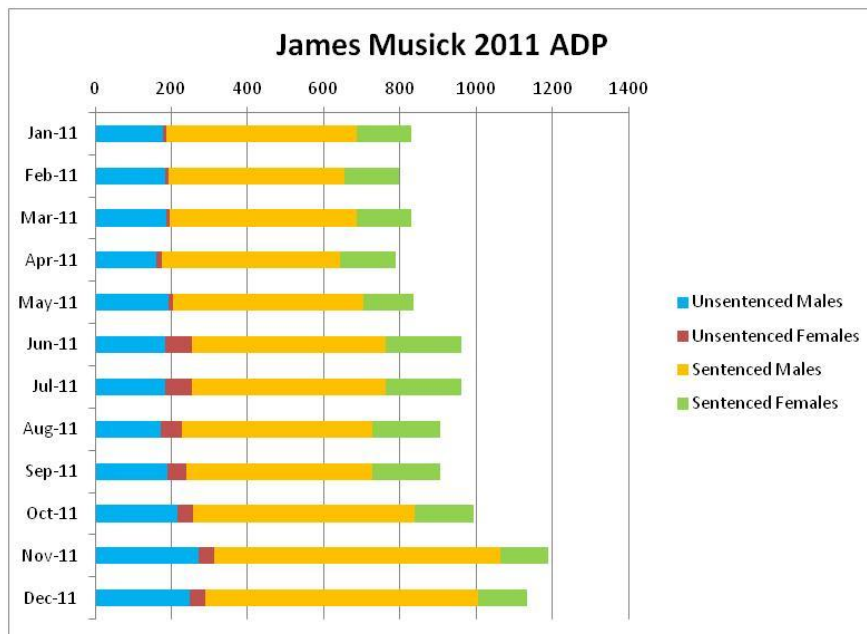
It is noted that none of the facilities in the Orange County jail system use video visiting. The Grand Jury believes that this technology offers an improved means to expand visiting opportunities and increase control over the visiting procedure

**James A Musick**

**Figure 4 – 2011 Average Daily Population**

**Inspection Results**

The Grand Jury inspection group noted no deficiencies at this facility. Its location seems to be the long-range solution to threats of overcrowding because of the prison realignment program. A jail expansion program has been planned for several years but has yet to be finalized because of perceived citizen concerns in the community.



**Office of Independent Review**

The Orange County Office of Independent Review was established in September 2008. Based on a Los Angeles County model, from whence the current director came, its stated purpose is "to monitor, assist and advise the Orange County Sheriff's Department in investigations of alleged officer misconduct and reviews of critical incidents including officer-involved shootings and in-custody deaths."

Recommended and strongly supported by the Sheriff, the Director of this office has had difficulty in satisfying the Board of Supervisors (BOS). The 2011-2012 Grand Jury has had several conversations with the Director and has made several requests for information that have always been quickly provided. In preparation for the jail inspections and evaluation of the results, the information he has provided and his perspective on issues have been appreciated.

The 2011-2012 Grand Jury questions, however, his placement in the County organization. The reality of reporting to five elected officials (BOS) seems contrary to sound organizational structure. There is no clear-cut line of authority; thus expectations are ambiguous and results difficult to measure. The 2011-2012 Grand Jury also questions his physical office location. The impression that he is imbedded with the Orange County Sheriff's Department (OCSD) is reinforced by the fact that his office is located in the OCSD Headquarters and daily contacts are with OCSD personnel.

### **Inmate Welfare Services**

Title 15 establishes minimum jail standards including the requirement that inmate services and programs related to rehabilitation opportunities be available to all eligible inmates. In Orange County the Inmate Welfare Fund provides most inmate programs without cost to the taxpayers. Financed primarily through revenue from inmate commissary purchases, telephone commissions, and education contracts with the Rancho Santiago Community College District, the Welfare Inmate Services program:

- Provides inmates an opportunity to attend classes to obtain a General Education Development Certificate;
- Offers continuing education classes that include improvement in English skills and U.S. Government classes;
- Provides a means to expand vocational education classes to train inmates to work in various occupations upon release; and
- Provides legal research assistance to inmates upon request.

These services are important to the effective management of an institution in more ways than one. In addition to the altruistic motive of providing educational and self-improvement opportunities to the inmates, the privileges become an important tool in the disciplinary process. As one facility commander observed, “if the inmate has no privileges, you have nothing to take away.”

### **The Inmate Re-Entry Program**

Based on a concept originating in 2005, this program has been developed into a comprehensive system involving several agencies. Managed by the Inmate Services Division of the Orange County Sheriff’s Department, Custody Operations Command, the program is focused on helping the newly released inmate stay out of jail. The process begins with an assessment interview and counseling while the inmate is in custody and continues after release. A resource center provides facilitators to assist ex-inmates with locating job opportunities, filling out job applications and contacting community assistance providers.

This program has received national recognition by the United States Department of Justice and National Institute of Corrections and has received a grant for staff training. Preliminary estimates have determined that the recidivism rate for participants is less than ten percent. A full study is under way with results expected later in 2012.

### **Local Jail Inspections**

In addition to the County Jails, the Grand Jury inspected the seven city operated jails listed below:

- Anaheim
- Buena Park
- Costa Mesa
- Fullerton
- Seal Beach
- Tustin
- Westminster

### **Comments**

All city jails inspected had the requested documentation consisting of:

- Interviews were conducted with facility management, line staff and some inmates (where available).
- All were forthcoming and responded to all inquiries by the Grand Jury inspection teams.
- No facility was found to be understaffed.
- All were clean and in good operating condition.

Individual inspection reports have been or will be sent to each city jail inspected.

### **An Observation**

Some of the city-operated jails may offer an opportunity to relieve a crowded county jail system by taking sentenced inmates on a contract basis. Several jails were inspected that although currently classified for “temporary holding” could qualify as “Type I” or “Type II” facilities; such a classification would enable them to keep inmates for a longer period of time. This offers the possibility of a revenue source for the cities and the provision of a manpower resource for daily cleaning and maintenance.

### **FINDINGS**

*In accordance with California Penal Code Sections §933 and §933.05, the 2011-2012 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.*

The 2011-2012 Orange County Grand Jury presents the following findings:

F1. Video surveillance systems in many of the county facilities are antiquated analog type systems offering poor quality and performance. Each facility relies on these video recording devices for staff and inmate safety.

F2. The practice of permitting unmonitored non-collect calls between selected inmates and attorneys, as authorized by court order, has a high potential to contribute to the risk of inmate-orchestrated incidents within and outside of the jail system.

F3. The courtroom (CJ1) at Men's Central Jail handles approximately 25 to 70 cases per day, thereby reducing transportation costs and inter-action between inmates. A second courtroom, perhaps at Theo Lacy, would provide a similar benefit.

F4. New hires for Deputy Sheriff positions face the probability of working several years in the custody division before transfer opportunities to patrol become available. Given their qualifications and training, this may not be the most effective use of personnel.

F5. The department's policy to provide an "Escort Deputy" to attend paramedics transporting an inmate to the hospital was not followed on July 1, 2011, when a female inmate required hospitalization.

F6. The Office of Independent Review provides a valuable risk management service to the county but may be improperly assigned and underutilized. Direct reporting to the Board of Supervisors results in inconsistent expectations, direction, and evaluations. Additionally, there is a perception that the operation is unduly influenced by the Sheriff's Department. This is reinforced by the physical location of the OIR office in the OCSD headquarters.

F7. The expected increase in jail population resulting from AB 109, Prison Realignment, has the potential to overwhelm existing jail facilities unless the County is able to quickly expand jail capacity. The Central Women's Jail was opened in early April 2012 with a capacity of 370. The population on the date of inspection was 354.

F8. Video visiting technology is currently not in use at any of the county's jail facilities. This technology could provide better inmate visiting, reduce staff time required to move inmates, and ultimately enhance jail safety and security.

F9. The Inmate Re-Entry program is a positive example of efforts to rehabilitate offenders and reduce recidivism. This program, in addition to the Collaborative Courts, provides innovative approaches to assisting inmates and others to make significant life changes.

## RECOMMENDATIONS

*In accordance with California Penal Code Sections §933 and §933.05, the 2011-2012 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 with a copy to the Grand Jury.*

The 2011-2012 Orange County Grand Jury presents the following recommendations:

R1. The Sheriff should place a high priority on upgrading video surveillance systems in the county jail system so that all units are protected by high quality digital monitoring systems providing maximum area coverage to improve the safety of inmates, staff, and visitors. (See F1).

R2. While the Grand Jury is aware that reduction of court-ordered non-collect calls lies within the sole discretion of the Court, the Grand Jury suggests that the Sheriff initiate a discussion with the Presiding Judge, the District Attorney, and the Public Defender to explore ways to reduce the frequency of ordered authorization to make non-collect telephone calls or find a way to control the placement of calls to reduce incidents of misuse. (See F2).

R3. The Sheriff should initiate a discussion with the Presiding Judge as to the possibility of locating a courtroom at Theo Lacy to reduce transportation costs and risks. (See F3).

R4. The Sheriff should give serious study and consideration to establishing a parallel career path for custody staff that would more fully utilize non-sworn employees within the custody division and replace a higher number of sworn staff so that they might be reassigned to patrol duties. (See F5).

R5. The Sheriff should review and clarify the OCS D policy related to the requirement of an “Escort Deputy” being immediately available at the IRC when an inmate is to be transferred to a medical facility. (See F6).

R6. The Board of Supervisors should review the role and responsibilities of the Office of Independent Review with a view toward expanding the scope of work to include the Probation Department facilities and reassign management control to the Chief Executive Officer as part of the County Risk Management operation. The OIR office should be relocated to the Hall of Administration. (See F7).

R7. The Sheriff and the Board of Supervisors should aggressively pursue the jail expansion project at the James Musick facility to meet the expected population increase that will occur over the next three years. (See F8).

R8. The Sheriff should explore the use of video visiting within the various facilities as a way of improving security and reducing staff time to move and supervise inmates. (See F9).

R9. The study of the Inmate Re-Entry program, currently under way, is scheduled to be completed in 2012. This study should be published, when complete, with a copy to the Grand Jury. (See F10).

**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 therefore.

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

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

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 Required:**

<b>Respondent</b>	<b>Findings</b>	<b>Recommendation</b>
Sheriff-Coroner	F1, F2, F3, F4, F5, F7, F8 & F9	R1, R2, R3, R4, R5, R7, R8 & R9
Office of Independent Review	F6	R6
OC Board of Supervisors	F6	R6

# ORANGE COUNTY JUVENILE DETENTION AND TREATMENT FACILITIES



### **Orange County Juvenile Detention and Treatment Facilities**

#### **SUMMARY**

At the beginning of 2012, the OC Probation Department operated five juvenile detention and/or correctional facilities in Orange County. Because of the increase in demand for adult jail beds by the Sheriff's Department, the Probation Department lost the use of the Theo Lacy Juvenile Annex. This required the integration of 56 juveniles into the general population of Central Juvenile Hall. These juveniles are considered the most serious offenders in the detention system and are under prosecution as adults. In spite of this increase at Central Juvenile Hall, all juvenile facilities are operating within their rated capacity.

While the juvenile facilities are generally in good condition, certain maintenance issues were identified at Central Juvenile Hall and are included in the findings. An issue exists with respect to the current practice allowing male and female minors to reside in the same unit. This arrangement resulted in a serious breach of security and is explored in this report.

The residential treatment facilities: the Youth Leadership Academy, the Youth Guidance Center, and the Joplin Youth Center are given relatively high marks. The only negative is the runaway rate at the Joplin Youth Center that was somewhat higher than expected.

#### **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 the public prisons within the County.” Although the juvenile detention facilities operated by the Probation Department are not technically “prisons,” they traditionally fall under this category for the Grand Jury investigations.

#### **METHODOLOGY**

Following a presentation to the 2011-2012 Grand Jury by the Chief Probation Officer and members of his management staff, the Jury reviewed the distributed documents to gather information regarding the various probation facilities and their programs.

Jury members visited and/or inspected all juvenile detention/correctional facilities. One visit was made to the Theo Lacy Annex and Youth Guidance Center, two visits to the Youth Leadership Academy and Camp Joplin, and three visits to Central Juvenile Hall.

All facility managers (or their designates) were interviewed at length with a prepared set of questions. Jury members also reviewed documents relating to prior inspections performed by the Correctional Services Administration, Health Department and Fire Department.

During the facility visits, jury members interviewed various probation staff and juvenile wards.

## Detention Facilities Report – Part II - Juvenile

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### BACKGROUND AND FACTS

During 2011-2012, the Orange County Probation Department operated the following five facilities providing housing and correctional care for youthful offenders under the jurisdiction of the Juvenile Court:

- Central Juvenile Hall located on City Drive in the city of Orange (next to the Lamoreaux Justice Center);
- Theo Lacy Juvenile Annex, located in the Theo Lacy Jail, next door to Central Juvenile Hall;
- The Youth Leadership Academy, also next door to Central Juvenile Hall;
- The Youth Guidance Center, located across the river from the above facilities on North Hesperian Street in the city of Santa Ana; and
- The Joplin Youth Center located in the foothills of the Santa Ana Mountains in Trabuco Canyon.

Prior to 2012, the Sheriff's Department had loaned the Theo Lacy Juvenile Annex, to the Probation Department. In early 2012, that facility was returned to the control of the Sheriff's Department.

All five facilities are briefly described below. Observations gained during the inspection process are presented in the ANALYSIS section of the report.

#### **Central Juvenile Hall (CJH)**

Orange County Juvenile Hall is a 380-bed institution for juvenile law violators. The facility houses boys and girls, generally between ages 12 and 18, who are detained pending Juvenile Court hearings in the adjacent Betty Lou Lamoreaux Juvenile Justice Center or who remain in custody by order of the Juvenile Court.<sup>1</sup>

Boys and girls are assigned to living units designed to house 20 to 60 minors. The units have sleeping rooms, restrooms, showers, and a day room for a variety of leisure and structured activities. Residents are generally housed by age group and gender. The Intake and Release Center houses newly arrested minors awaiting an initial court appearance. Each unit is supervised during each shift by Deputy Probation Correctional Officers or "sworn probation staff," who provide individual and/or group counseling and provide supervision.

The Orange County Department of Education provides a fully accredited academic program on-site. Nurses and dentists from the Orange County Health Care Agency provide medical and dental care. Psychiatrists and psychologists from the Health Care Agency evaluate and assist minors exhibiting emotional or mental problems. Other specialized services are provided as needed.

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<sup>1</sup> **Program Description, Orange County Probation Department**, posted to web site

## Detention Facilities Report – Part II - Juvenile

Minors participate daily in outdoor sports and other recreation. Religious and Bible studies are available to youths upon request. Each living unit has a small library, and telephones are available for minors to make collect calls. Visiting hours are scheduled weekly.

Representatives from the Corrections Standards Authority, Juvenile Court, and the Orange County Juvenile Justice Commission monitor conditions and the care of youths at Juvenile Hall.

**Figure 1 – Central Juvenile Hall - 2011 Average Daily**

### Population (ADP)

The rated capacity for this facility is 434. In July 2009, Probation Management set the operational capacity at 380 for budgetary reasons.

While the population has been running comfortably below the rated capacity, it has been very close to the operating capacity.

In June 2011 for example, the Average Daily Population was 373, just seven under the operating capacity.



According to the data provided by the Probation Department,<sup>2</sup> just under 90 percent of the Central Juvenile Hall residents are boys.

### Theo Lacy Annex

The Theo Lacy Juvenile Annex is one module of the adult Theo Lacy jail operated by the Sheriff's Department. Prior to December 2011, the Theo Lacy Juvenile Annex in the City of Orange, near the Lamoreaux Justice Center, housed up to 56 older teenage boys either pending court hearings or serving Juvenile Court commitments. This section housed the Extreme Security Risk Unit consisting of minors who have been charged with the most serious offenses such as murder, attempted murder, rape and robbery.

On October 1, 2012, Assembly Bill (AB) 109 was implemented in the state of California. This legislation requires counties to keep certain, non-serious felons in county jail rather than

<sup>2</sup> **Monthly Institutional Population Report**, Orange County Probation Department

## Detention Facilities Report – Part II - Juvenile

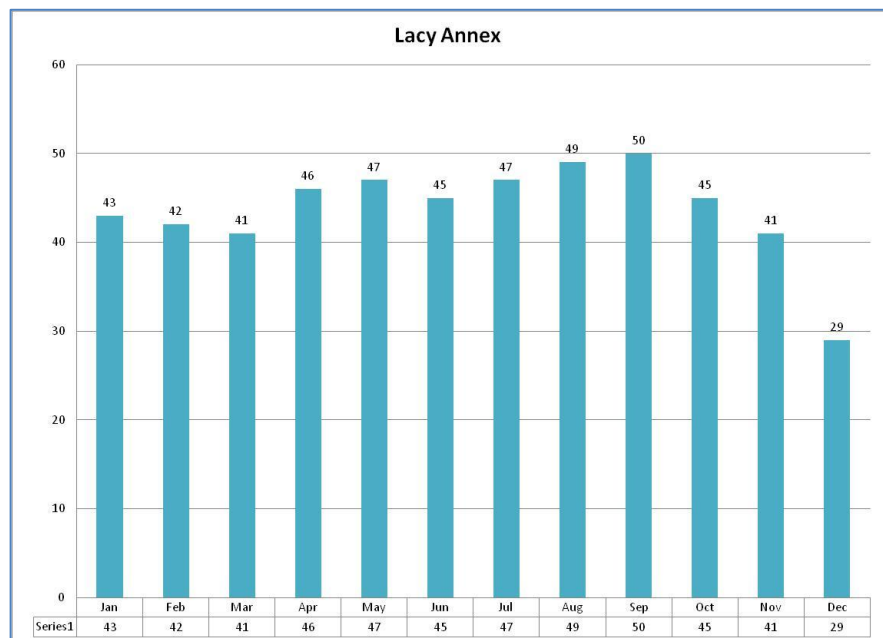
committing to state prisons. In addition to an increase in sentenced prisoners, the length of sentence is longer for this new jail population: up to three years as opposed to one-year for misdemeanor sentences. Because of this change in law, and the resulting requirement for additional jail beds, the Sheriff's Department found it necessary to resume control of the Theo Lacy Juvenile Annex.

The Probation Department began moving juveniles out of the Theo Lacy Annex in December 2011 and completed the move in January 2012. The juveniles remaining in custody at Theo Lacy were transferred to Central Juvenile Hall.

**Figure 2 – Theo Lacy Annex – 2011 Average Daily Population**

(ADP)

As shown in Figure 2, the Theo Lacy Juvenile Annex normally housed between 40 and 50 minors. At the end of December 2011, the number was down to 29. In January 2012, the remaining minors were moved to Central Juvenile Hall. All beds in this former juvenile facility are now controlled by the Sheriff's Department for housing adult inmates.



### Youth Leadership Academy (YLA)

The Youth Leadership Academy is a 60-bed secured treatment facility located in the City of Orange adjacent to Central Juvenile Hall. This facility, classified as a camp, opened in 2006. The academy originally was housed in three buildings and had a capacity of 120 juveniles. Two identical buildings were used for holding male residents and the third, a smaller building, served as the administration building. One of the residential buildings has been closed for budgetary reasons.

## Detention Facilities Report – Part II - Juvenile

While the remaining dormitory is mostly self-contained, the residents must attend school next door at Central Juvenile Hall. YLA provides a variety of programs designed to prepare older juveniles for return to the community.

The resident population consists of young men between the ages of 17.5 and 20 years of age who have a moderate to high risk to re-offend. They have also experienced problems with aggression, anti-social attitudes, belief systems, behavior and peers. They are often drug and alcohol dependent and lack self-control. The average length of commitment is 120 days.

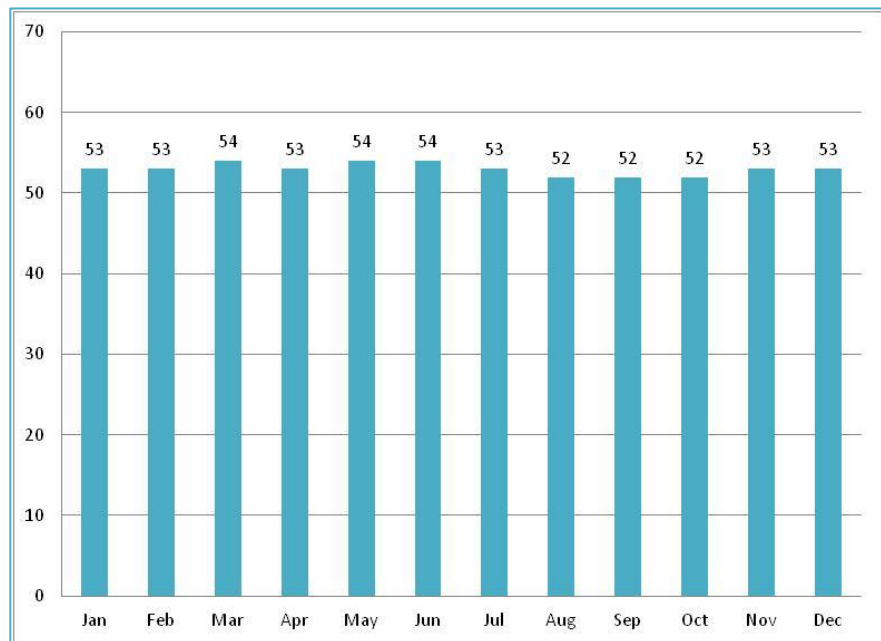
The YLA program is designed to prepare youth to transition back into the community through a comprehensive program that includes remedial education, substance abuse programs and mental health services. The Orange County Department of Education provides a school program. The Orange County Health Care Agency provides on-site medical services. The Clinical Evaluation and Guidance Unit provides individual and family counseling. Drug and alcohol education, assessments and treatment programs are available as needed.<sup>3</sup>

**Figure 3 – Youth Leadership Academy – 2011 Average Daily Population**

(ADP)

As seen in Figure 3, the average daily population of the Youth Leadership Academy has been stable at about 53 residents.

This is near, but still under the operational capacity of 60.



### Youth Guidance Center (YGC)

The Orange County Youth Guidance Center (YGC) is centrally located in Santa Ana across the river from Central Juvenile Hall and the Youth Leadership Academy. The facility has a total of 80 beds: 60 are for boys and 20 for girls. The facility offers substance abuse rehabilitation for male and female minors ranging from 13 to 20 years of age. All residents participate in an academic program at the on-grounds Rio Contiguo High School operated by the County

<sup>3</sup> Orange County Juvenile Justice Commission, **Annual Report, 2010**

## Detention Facilities Report – Part II - Juvenile

Department of Education. Students normally attend six classes per day. Selected students, however, may attend off-grounds college courses or available correspondence and televised courses for college credit.

All residents perform basic housekeeping, assist with the laundry, perform building and grounds maintenance, and take part in the culinary arts program.

The facility offers two programs directed toward the treatment of drug and alcohol abusers. They focus on the wide range of needs existing among the offenders in residence. “The primary goals are to provide cognitive behavioral interventions designed to encourage pro-social thinking and to develop each minor behaviorally, vocationally and academically in preparation for re-entry into the community.”<sup>4</sup>

**Figure 4 – Youth Guidance Center (YGC) – 2011 Average Daily**

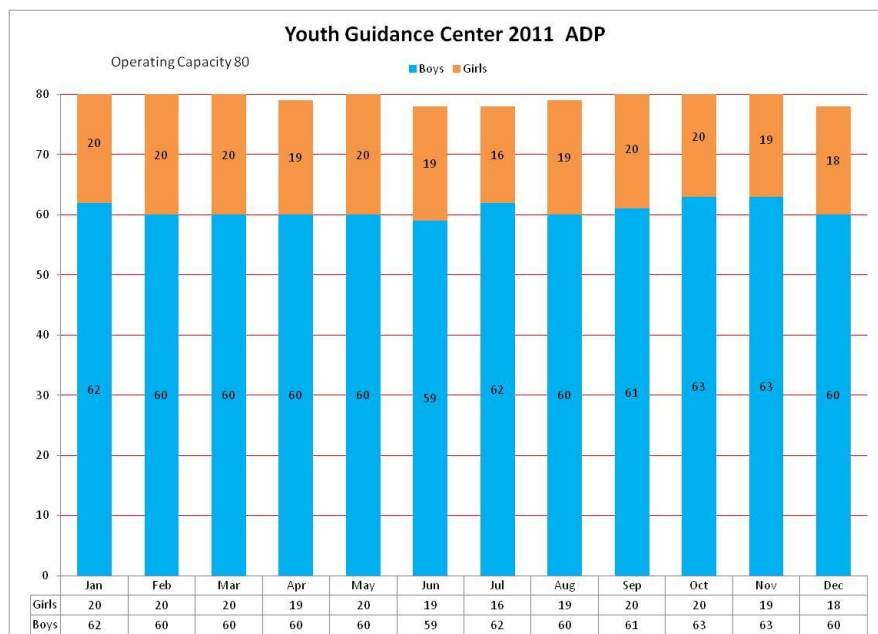
### Population

YGC has a rated capacity of 125 but has an operating capacity of 80 beds. The remaining 45 beds have been closed for budgetary reasons.

As shown in Figure 4 the 2011 average daily population was stable with approximately 60 boys and 20 girls in residence.

The programs establish individual treatment plans tailored to each subject’s specific needs. Each of the four living units has a

dedicated on-site psychologist and drug counselor as well as an onsite probation officer who, along with an assigned deputy juvenile correctional officer and the school staff, establish objectives and goals for the residents to follow and achieve during their stay. Volunteers and mentors from the community enhance the overall program.



### Joplin Youth Center (JYC)

The Joplin Youth Center is a juvenile correctional facility providing residential treatment for

<sup>4</sup> Supra, Probation Department **Program Description**

## Detention Facilities Report – Part II - Juvenile

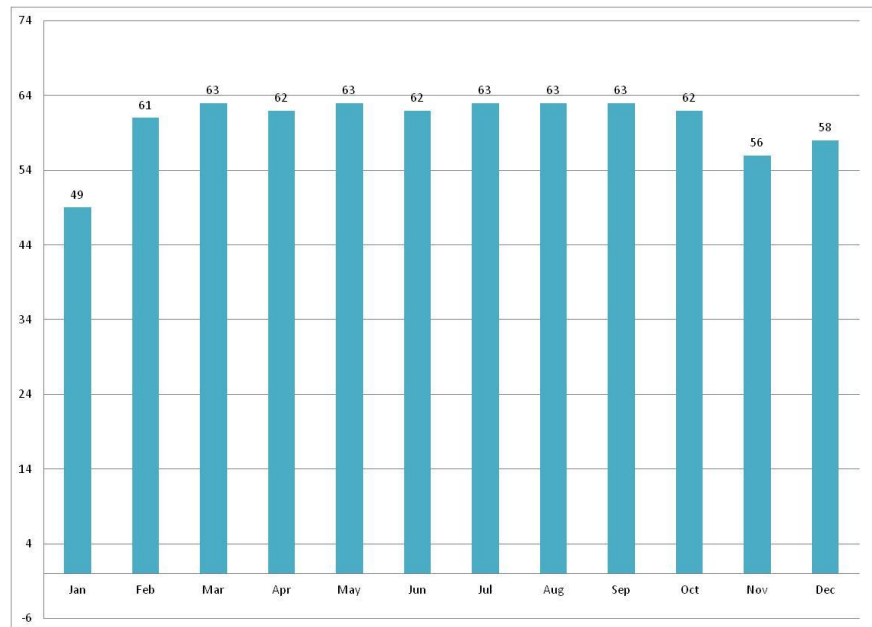
teenage boys ages 13 to 16. Classified as an “open camp”, it is located in a rustic setting in the foothills of the Santa Ana Mountains at an elevation of 1,800 feet. The buildings, which include administration, dormitory, and schools plus a large recreational area, cover about 20 acres.

Joplin is an open camp with very little security. Residents must therefore be screened for suitability. Youths with a runaway history are not good candidates for this setting.<sup>5</sup>

**Figure 5 – Joplin Youth Center – 2011 Average Daily**

### Population

This facility has a rated and operational capacity of 64 residents. As shown in figure 5, the average daily population of this camp has been at or near capacity for most of 2011. January, November and December were slightly under capacity.



The school day at Joplin consists of five 55-minute classes in which the boys work on individualized courses of instruction. They also receive special education classes, employment training, library access, and math tutoring as needed. The Joplin program stresses rehabilitation and academics. Camp staff and the Orange County Health Care Agency provide counseling for boys who have abused drugs or alcohol. Narcotics Anonymous and Alcoholics Anonymous hold meetings on-site on a weekly or bi-weekly basis.

### Alternative Confinement Programs (ACP)

Although technically not part of the juvenile detention facilities, the alternative confinement programs operated by the Probation Department offer an alternative to detention or commitment to an institutional correctional program. A brief description of the program and operational data are included here.

“ACP was established in 1996 by authorization of the Presiding Judge of the Orange County Juvenile Court. A standing court order permits probation staff to release certain minors from Central Juvenile Hall to complete their court commitment on a day reporting program under GPS

<sup>5</sup> Supra, **Probation Department Program Description**

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monitoring (added in 2006). Minors may also be committed directly to this program by the court.<sup>6</sup>

Eligibility for release requires that minors have 120 days or less remaining on their commitment and pose minimal risk to the community. Minors who have committed certain serious offenses are not eligible for the program.

The program is a joint effort of the Probation Department and the Orange County Department of Education. Participants attend school in the morning and are assigned to work crews or counseling programs in the afternoon. Deputy Juvenile Correctional Officers supervise the afternoon activities.

**Figure 6 – Accountability Commitment 2011 Average Daily**

### Population

The number of participants ranged from a high of 44 in November to a low of 26 in September.

The average daily population for 2011 was 29 boys and 5 girls for a total of 34.



### ANALYSIS

Presented in this section are the observations of the Grand Jury inspection teams during the orientation and inspection visits. These facilities are also inspected by a number of agencies that include:

- State of California Correctional Standards Authority - bi-annual inspections
- Orange County Health Department – annual inspections
- Orange County Fire Authority – annual inspections
- Orange County Juvenile Justice Commission – annual inspections

<sup>6</sup> Program Description by Orange County Probation Department

## Detention Facilities Report – Part II - Juvenile

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- Presiding Judge, Orange County Juvenile Court – annual inspections

### **Central Juvenile Hall**

#### **Review of Inspection Documents and Physical Inspection**

Grand Jury members visited Central Juvenile Hall on three occasions. The first was a general orientation tour, the second a review of inspection documents and physical inspection of the facility and the third, a follow-up visit following the news story regarding a sex incident that is described later in this report.

The Corrections Standards Authority inspection showed compliance in all areas but noted that the older units were showing extensive signs of wear and tear. A Health Department report was critical of the condition of the paint, general maintenance and housekeeping in several units. The Grand Jury team inspected unit I and found it to be in generally poor condition. Of particular concern was the peeling paint that appears to have been stripped from the walls by the minors housed in that unit. The Health Department also noted toilet tissue debris clogging the air vents.

The Grand Jury inspectors were also concerned about an apparent lack of attentiveness of staff on duty to the behavior and expressed needs of one of the juveniles in the unit. They observed a young male, obviously emotionally upset and in need of attention, to be basically ignored by the staff on duty.

Several issues were identified by the Grand Jury inspectors with respect to the trailer housing the visiting facility. These include:

- The visitation trailer shows signs of having worn and soiled carpeting and poor air conditioning;
- The signage with visiting rules is faded and difficult to read; and
- There is a lack of seating near the entrance for visitors arriving early.

### **A Newsworthy Incident**

On February 12, 2012, a male and female resident were found together in the female's room. The story, reported by the Orange County Register,<sup>7</sup> claimed that the two were together in the room for approximately four-hours and had engaged in sex. While facts are limited at this time because the matter is under investigation by the Sheriff's Department, the Probation Department and the Office of Independent Review. Indications are, however, that the two were housed in a coed unit and were not supervised according to policies and procedures pertaining to room checks.

This is the first use of the Office of Independent Review outside the Sheriff's Department. The Grand Jury believes this is a logical expansion of the duties of this office and should lead to a broader role with respect to the Probation Department Juvenile Facilities.

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<sup>7</sup> Hernandez, Salvador – Orange County Register – “Watchdog” – February 25, 2012

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### **Youth Leadership Academy**

The 2011-2012 Grand Jury made two visits to this facility. There were no compliance issues either in the review of the documents or the physical inspection. The program in place appears to be well planned and professionally implemented.

### **Youth Guidance Center**

The 2011-2012 Grand Jury also made a single visit to the Youth Guidance Center. Members found this facility to be an attractive environment with a strong drug treatment program. The interaction with the juveniles in residence was helpful to gain a perspective on the difficulties of treating young people with serious drug problems. There is a strong connection with the Regional Occupational Program (ROP) that provides residents with meaningful work experience in such areas as culinary arts and landscaping.

### **Joplin Youth Center**

The 2011-2012 Grand Jury made two visits to the Joplin Youth Center. Because of the age of the facility, maintenance and repairs need continuous attention. In spite of this, the overall impression, as with the Youth Guidance Center, is very attractive. The grounds are very well maintained by the boys in residence who appear to be benefitting from the camp regimen and life-style.

Although the commitments are in the 90-day range, the average length of stay is approximately 35 days. This short term of stay is a major concern. Based on interviews with staff, there appears to be an opinion held by some school and probation staff, that the program benefits would be enhanced by longer terms in residence. The Grand Jury believes that the any behavioral gains may be short lived given the brief length of stay. Coordinating a meaningful educational program given the limited time available for each student and the rapid turn-over in the classroom is problematic.

The only other concern at Joplin was the fact there had been seven runaways during the past year. Recognizing that there no effective security exists (except for the remote location) extra care must be taken at the intake level to ensure that minors with a high runaway potential are not accepted into the program.

### **School Programs**

As part of the inspection process, the 2011-2012 Grand Jury also visited each school providing educational services to detained minors. The group was favorably impressed with the quality of the classroom environment and the dedication of the teaching staff. The overall impression is that staff do a stellar job under very difficult circumstances created by the daily turnover and their often brief stay in residence.

### **A Message to Probation Management and Staff**

## Detention Facilities Report – Part II - Juvenile

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Members of the 2011-2012 Grand Jury as a whole as well as the inspection teams were treated with great courtesy by Probation Management and staff. The criminal justice committee of the Grand Jury recognizes that working in the juvenile correctional environment can be very difficult at times, but also very rewarding. With shrinking budget resources, staff is asked to do more with less. While a few areas of concern are articulated in this report, we found, the facilities overall were in good condition and well managed.

Managers, supervisors and staff working in the various juvenile institutions impressed the committee as highly professional and well-motivated.

### **FINDINGS/CONCLUSIONS**

*In accordance with California Penal Code Sections §933 and §933.05, the 2011-2012 Orange County Grand Jury requires responses from each agency affected by the **Findings/Conclusions** 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.*

**F1.** The placement of male and female detainees in a coed unit at Central Juvenile Hall at Central Juvenile Hall resulted in a boy and girl being together, in the female's room for an extended period of time possibly engaging in sexual conduct without staff's knowledge or consent.

**F2.** Maintenance in Unit I at Central Juvenile Hall needs attention with respect to the condition of the painted surfaces and general cleanliness of the unit.

**F3.** Improvements are needed in the CJH visiting area including modification to the trailer to improve the general appearance (new carpeting), comfort (upgrade air conditioning), improve signage, and provide outdoor seating at the visitor's entrance for early arrivals.

**F4.** The runaway rate at the Joplin Youth Center exceeded the norm during the past year. This is most likely because of the failure to screen minors with high runaway potential at the intake process.

**F5.** The brief length of stay at the Joplin Youth Center results in a high rate of turnover of students creating a difficult situation for the school teaching staff and minimizes the lasting effects of a positive rehabilitative experience.

**F6.** The risk management aspects of operating juvenile detention and correctional facilities could benefit from the availability of the Office of Independent Review to follow-up on serious behavioral incidents and assist in investigating allegations of staff misconduct.

### **RECOMMENDATIONS**

*In accordance with California Penal Code Sections §933 and §933.05, the 2011-2012 Orange County Grand Jury requires responses from each agency affected by the **Recommendations***

## Detention Facilities Report – Part II - Juvenile

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*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.*

**R1.** The Probation Department should review and possibly reconsider the placement of male and female juveniles in the same living unit. (See F1).

**R2.** Probation Department management should review and revise policies and procedures, training and performance of staff responsible for supervision and security in the unit where the alleged sexual misconduct occurred. (See F1).

**R3.** Probation Department management should conduct a thorough inspection of Unit I and other units to determine the condition of painted surfaces, cleanliness of vents and other maintenance problems and issue work orders to take corrective action where indicated. (See F2).

**R4.** Probation Department management should budget for replacement of the carpeting and improvement of the air conditioning in the visitation trailer. (See F3).

**R5.** During the intake process, minors should be thoroughly screened for high runaway potential and those who have such potential should not be placed at Joplin Youth Center, an open camp with little security. (See F4)

**R6.** A bench should be installed near the entrance to the visitation trailer for early arrivals. (See F3).

**R7.** Probation Department Management should review the need for limiting the Joplin Youth Center Program average length of stay. Any time less than 90 days does not appear to be an effective use of facility resources.

**R8.** The Board of Supervisors should expand the scope of work for the Office of Independent Review to include reviews of the Probation Department Juvenile facilities operations. (See F6).

### **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:

## Detention Facilities Report – Part II - Juvenile

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

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 Required:

<b>Respondent</b>	<b>Findings</b>	<b>Recommendation</b>
Chief Probation Officer	F1, F2, F3, F4, F5 & F6	R1, R2, R3, R4, R5, R6 & R7
Office of Independent Review	F6	R7
OC Board of Supervisors	F6	R7

HUMAN TRAFFICKING

## SEX TRAFFICKING OF GIRLS



**GRAND JURY 2011-2012**

2011/2012 ORANGE COUNTY GRAND JURY

## **SEX TRAFFICKING OF GIRLS**

### **SUMMARY**

The 2011-2012 Orange County Grand Jury studied the sexual exploitation of youth under 18 years of age in Orange County. Although sex trafficking involves both males and females; for the purpose of this study the focus was limited to girls. “There are many forms of trafficking, but one consistent aspect is abuse of the inherent vulnerability of the victims”.<sup>1</sup>

The 2011-2012 Orange County Grand Jury discovered that sexual exploitation of girls is growing rapidly throughout the United States. Limited awareness exists among Orange County government officials, social service agencies, law enforcement and the general public in recognizing sex trafficking as a crime for the victim.

### **PURPOSE**

The purpose of this study is to raise awareness of the sex trafficking of girls under the age of 18 in Orange County. The 2011-2012 Grand Jury is sending a message to law enforcement and governmental agencies that they should more effectively combat this injustice through greater communication and collaboration.

### **METHODOLOGY**

The 2011-2012 Orange County Grand Jury’s findings are based on research using the following methods:

- Attended a conference on sex trafficking at Vanguard University in Costa Mesa, California March 2-3, 2012;
- Interviewed personnel trained in the field of sex trafficking at select police departments;
- Interviewed agencies providing services to victims of sex trafficking, including the Human Trafficking Task Force (HTTF), Salvation Army, Orange County Probation Department and the Orange County Judicial System;
- Interviewed nationally known experts on sex trafficking including members of the Federal Bureau of Investigation, Homeland Security and Vanguard University Global Center for Women and Justice;
- Interviewed the Orange County Sheriff and OCSD Captain of Investigations Division;
- Interviewed Orange County Probation Department supervisors;

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<sup>1</sup> INTERPOL, 2012

- Interviewed two Orange County deputy district attorneys who are knowledgeable regarding the implementation of Penal Code §1275.1 involving the incarceration of pimps;
- Participated in a ride-along with police vice squad personnel who work in the area of sex trafficking; and
- Researched articles found on the Internet web sites related to sex trafficking.

### BACKGROUND

The term trafficker according to the dictionary is defined as a person who trades or deals in a specific commodity or service, often of an illegal nature. “Human trafficking involves the recruitment, transportation or harboring of persons for the purpose of exploitation (typically in the sex industry or for forced labor)”.<sup>2</sup> The 2011-2012 Grand Jury study focuses on the sexual exploitation of girls under 18 years of age in Orange County.

Traffickers use a variety of methods to maintain control over their victims including force, sexual assault, threats of violence and physical or emotional abuse. Traffickers exploit vulnerabilities and lack of opportunities, while offering promises of housing, food, clothing, marriage, employment, education and/or an overall better life. Ultimately, promises may never be fulfilled and the girls become dependent on the trafficker. Eventually the trafficker demands “payback” for providing these essential elements in life by introducing the girl into prostitution.

Some girls who are easy targets for traffickers come from homes where sexual or physical abuse occurred. Often these girls become runaways without resources and fall into the hands of traffickers. The girls are then at the mercy of traffickers who use a variety of methods to maintain control over their victims, including trauma bonding, a psychological development that occurs when the victim begins to see the captor as a savior. The victims are so dependent on the trafficker for survival that they do not see the injustice being perpetrated on them.<sup>3</sup>

The 2011-2012 Grand Jury learned that in years past, the girls were known to walk along major Orange County streets soliciting customers. Due to the Internet, the sex market has expanded into advertising young girls in a provocative way. Websites attract customers and make the traffickers more difficult to identify and arrest. *“The Internet has been identified as the number one platform that ‘pimps,’ traffickers, and ‘johns’ currently use for buying and selling women and children for sex in the United States. Victims are trafficked through pimp-controlled sex trafficking, escort services, chat rooms, pornography, and brothels disguised as massage parlors which are commonly marketed on websites such as Backpage.com, Eros.com and others. Sex trafficking crosses state or county boundaries. The transient nature of the trafficking markets*

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<sup>2</sup> Royal Canadian Mounted Police; November 2, 2011,

<sup>3</sup> Information obtained from interviews with, the Global Center for Women and Justice, Vanguard University, Costa Mesa, CA ; DA Office; Westminster PD

keep pimps below the radar of most law enforcement agencies. This allows the traffickers to move with their victims from city to city evading detection and preventing the girls from becoming identified as minors to law enforcement or service providers such as social services.<sup>4</sup>

Criminal cases show a clear link between dangerous street gangs and human trafficking. *“With state and national crackdowns on drug trafficking, gangs have turned to sex trafficking for financial gain. Unlike drugs, girls can be used more than once, and it is the girls, not the traffickers, who run the greatest risk of being caught and prosecuted.”*<sup>5</sup> Through multiple interviews, the 2011-2012 Grand Jury learned that as gangs became aware of the lucrative aspects of sexually exploiting young girls they expanded to sex trafficking and created a huge revenue source.

The 2011-2012 Orange County Grand Jury read The National report on Domestic Sex Trafficking and learned that *“misidentification of victims to be the primary barrier to properly addressing America’s trafficked children. Consequently, this misidentification often leads to the criminalization of victims, barring them from receiving proper treatment and care. In fact, in nearly every location American child victims of sex trafficking are being arrested for the crime committed against them while their abusers walk free. In addition, the study found a severe lack of appropriate protective and therapeutic shelters. Finally, the National Report emphasizes that although buyers are critical in addressing the issue of child trafficking, buyers most often escape criminalization.”*<sup>6</sup> The arrest of a child trafficking victim for prostitution sends a very clear message that she is to blame.

Grand Jury members attended a human trafficking conference held at Vanguard University, Costa Mesa, California on March 2-3, 2012. During this conference it was confirmed many of the children victimized by human traffickers were brought to Orange County from outside the area. Multiple speakers at this conference reiterated collaboration and communication between agencies as key components toward remediation of this problem. It was learned during the conference that sexual exploitation of girls is growing rapidly throughout the United States. The Grand Jury members learned that there is limited awareness among Orange County government officials, social service agencies, law enforcement and the general public in recognizing sex trafficking as a crime for the victim.<sup>7</sup> This was confirmed through interviews with police departments, probation personnel and Orange County Deputy District Attorneys.

Sex trafficking of girls under the age of 18 is beginning to be recognized as a significant problem throughout the state of California. See Appendix B for a recent description of Los Angeles County’s campaign efforts to address this issue.

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<sup>4</sup> Supra, information from interviews

<sup>5</sup> Laura Lederer; *“Sold For Sex.; The Link Between Street Gangs and Human Trafficking.”* October 21, 2011; The Witherspoon Institute

<sup>6</sup>“National Report on Domestic Minor Sex trafficking, *“America’s Prostituted Children,”* Shared Hope International, May 2009

<sup>7</sup> Supra, Vanguard University Conference

## LEGISLATION

Penal Code § 1275.1 states that upon *arrest* “*Bail, pursuant to this chapter, shall not be accepted unless a judge or magistrate finds that no portion of the consideration, pledge, security, deposit, or indemnification paid, given, made, or promised for its execution was feloniously obtained.*”<sup>8</sup>

This provision allows the courts to deny bail and hold perpetrators in custody if there is probable cause to believe that the source of the bail money was illegally obtained, which prevents “pimps” from intimidating and victimizing young girls once they are released from custody. Police officers and district attorneys can become more proactive by filing more declarations setting forth probable cause in cases where they believe that the source of bail money was illegally obtained.

A proposed state initiative entitled the CASE Act (Californians Against Sexual Exploitation) is scheduled for the November 2012 election. This initiative, if passed, provides greater penalties for sexual exploitation of minors. The provisions of the CASE Act are listed in Appendix A.

## FACTS

**Fact:** Sex trafficking of American children is considered by criminals and gangs to be a low risk crime.

**Fact:** “*The average age that a victim is first trafficked for sex in the United States is just 12-14 years old.*”<sup>9</sup>

**Fact:** End Child Prostitution and Trafficking (ECPAT-USA) provides training, awareness raising and policy recommendations to organizations in the United States as they work toward resolving the issues of human trafficking.

**Fact:** The February 29, 2012 Human Trafficking Task Force (HTTF) estimated that over 1,000 victims of human trafficking may be in Orange County although current data does not exist to determine how many are girls under the age of 18. The primary agencies involved are Community Services Programs (CSP); Anaheim Police Department; Westminster Police Department and the Salvation Army. At a HTTF meeting, the need for more training for law enforcement was reinforced. This task force also developed a list of indicators used to identify a human trafficking victim.

**Fact:** Shared Hope International reported that using a conservative estimate, “a domestic minor sex trafficking victim who is rented for sex acts with five different men per night, for five nights per week, for an average of five years, would be raped by 6,000 buyers during the course of her victimization through prostitution.”<sup>10</sup> According to a study done in Oceanside, California, in

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<sup>8</sup> Penal Code 1275.1

<sup>9</sup> National report on Domestic Minor Sex Trafficking “*America’s Prostituted Children*,” Shared Hope International, Chapter 3, page 30, Vulnerability, May 2009

<sup>10</sup> Laura Lederer, “*Sold for Sex: The Link Between Street Gangs and Human Trafficking*”, October 21, 2011, Witherspoon Institute

April 2011, the victims of sex trafficking trapped in a hotel for twelve hours a day each brought in between \$1,000 to \$3,000 dollars per day.<sup>11</sup>

**Fact:** Orange County Probation supervisors stressed the need for a safe group home to shelter the victim from a trafficker or pimp and provide for stabilization to promote healing and independence. Law enforcement and prosecutors may request detention of a child to protect them from further exploitation by pimps. Three main components of a safe group home are:

- *“Distance: Isolate the shelter from major transportation centers and common trafficking;*
- *Staff Secure: A large ratio of staff to minors can help keep a minor from being re-trafficked and hinder running away;*
- *Formal Security: Security systems such as outdoor and indoor cameras can go a long way in providing security. Highly secure facilities that are restorative in nature can also assist in hindering both outsiders obtaining entry and youth running away.”<sup>12</sup>*

The 2011-2012 Grand Jury determined from interviews with Orange County Probation, the Salvation Army and a Community Coordinator from Flanders Pointe (supported by the Orangewood Foundation) that no safe group home currently exists in Orange County. A news release from the Los Angeles, California, Times newspaper, dated May 31, 2012 indicates a campaign has been launched to halt sex trafficking of underage girls by the Los Angeles County Board of Supervisors. Posters are being installed in Metro buses and rail cars in Spanish and English to call attention to the sexual exploitation of underage girls. Other agencies including the probation department are looking at sexually exploited underage girls more as victims than as criminals. In addition, agencies are exploring access to support services.

### FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2011-2012 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 Human Trafficking in Orange County, the 2011-2012 Orange County Grand Jury has findings:

**F1.** The Human Trafficking Task Force (HTTF) recognized that more law enforcement training is needed in sex trafficking.

**F2.** Child victims of sex trafficking require specialized shelter.

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<sup>11</sup> Ibid, Laura Lederer

<sup>12</sup> Supra, Shared Hope International training conference: *“Sex Trafficking of America’s Youth,”* May 2009

**F3.** Child victims of sex trafficking are often misidentified. Due to the lack of proper identification of the child's age, law enforcement agencies may be unable to charge the trafficker/pimp with child related sex trafficking violations.

**F4.** Trafficked minors often flee non-secure shelters. Law enforcement and prosecutors may request detention of a child to protect them from repeated exploitation by pimps.

**F5.** Penal Code §1275.1 allows the courts to set conditions on bail, including presenting probable cause that the bail money (or the security for the bond) was illegally obtained. This provision allows law enforcement and the courts to hold the perpetrators, which may keep them from intimidating and victimizing young girls once released.

**F6.** No safe group home currently exists in Orange County to shelter the victim from a trafficker or pimp and provide for stabilization.

**F7.** Currently no data base is available to law enforcement agencies to check and identify victims of sex trafficking.

### **RECOMMENDATIONS**

In accordance with California Penal Code Sections 933 and 933.05, the 2011-2012 Grand Jury requires responses from the Orange County Sheriff/Coroner, District Attorney and the Police Chiefs in the cities set forth in the matrix and requested from the Orange County Executive Officer and Probation Department. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of the agencies in Orange County, the 2011-2012 Orange County Grand Jury makes the following recommendations:

**R1.** Police and Sheriff Departments should provide additional training for officers to clarify law enforcement's understanding and awareness of minor sex trafficking of girls.

**R2.** The Sheriff's Department, city police departments and responsible Orange County agencies should develop a data base using a single term such as "Minor Sex Trafficking" to allow the trafficked victims to be systematically tracked with the result of a proper identification and status as a victim of crime. A consistent label for the crime would allow multiple agencies, communities and regions to research and intervene in a single coordinated effort.

**R3.** Law enforcement agencies and district attorneys should consider using the provisions of California Penal Code §1275.1 more frequently if they have cause to believe that the source of bail money for a 'pimp' or 'john' was illegally obtained.

**R4.** The County Executive Officer should direct responsible agencies to develop a strategic plan to eliminate this growing problem and meet the immediate need for food, shelter, treatment and

protection from exploitation. The establishment of a safe group home in Orange County would be instrumental in meeting this need.

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

## HUMAN TRAFFICKING

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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:

**HUMAN TRAFFICKING**

RESPONSE MATRIX	F1	F2	F3	F4	F5	F6	F7		R1	R2	R3	R4
<b>Anaheim PD</b>	X		X	X	X		X		X	X	X	
<b>District Attorney</b>	X		X	X	X		X		X	X	X	
<b>Brea PD</b>	X		X	X	X		X		X	X	X	
<b>Buena Park PD</b>	X		X	X	X		X		X	X	X	
<b>Costa Mesa PD</b>	X		X	X	X		X		X	X	X	
<b>Or. County Executive Officer</b>		X		X		X						X
<b>Cypress PD</b>	X		X	X	X		X		X	X	X	
<b>Fountain Valley PD</b>	X		X	X	X		X		X	X	X	
<b>Fullerton PD</b>	X		X	X	X		X		X	X	X	
<b>Garden Grove PD</b>	X		X	X	X		X		X	X	X	
<b>Huntington Beach PD</b>	X		X	X	X		X		X	X	X	
<b>Irvine PD</b>	X		X	X	X		X		X	X	X	
<b>La Habra PD</b>	X		X	X	X		X		X	X	X	
<b>La Palma PD</b>	X		X	X	X		X		X	X	X	
<b>Laguna Beach PD</b>	X		X	X	X		X		X	X	X	
<b>Los Alamitos PD</b>	X		X	X	X		X		X	X	X	
<b>Newport Beach PD</b>	X		X	X	X		X		X	X	X	
<b>OC HTTF</b>	X		X	X			X			X		
<b>OC Probation</b>	X	X	X	X	X	X	X			X		
<b>OC Sheriff/Coroner</b>	X		X	X	X		X		X	X	X	
<b>Orange PD</b>	X		X	X	X		X		X	X	X	
<b>Placentia PD</b>	X		X	X	X		X		X	X	X	
<b>Santa Ana PD</b>	X		X	X	X		X		X	X	X	
<b>Seal Beach PD</b>	X		X	X	X		X		X	X	X	
<b>Tustin PD</b>	X		X	X	X		X		X	X	X	
<b>Westminster PD</b>	X		X	X	X		X		X	X	X	

Appendix A

Provisions of the CASE Act

- *“Increase prison terms for human traffickers (the current penalty for sex trafficking of a minor is 3-8 years); the CASE Act would increase the penalty to 15 years to life in prison;*
- *Increase fines for human traffickers, up to \$1,500,000 to be granted to organizations that provide direct victim services (the current penalty for sex trafficking of a minor is up to \$100,000);*
- *Remove the need to prove “force” to prosecute perpetrators of sex trafficking of a minor (to make it easier to prosecute perpetrators of sex trafficking of a minor);*
- *Mandate two hours of human trafficking training for law enforcement (currently, training is optional);*
- *Require sex traffickers register as sex offenders;*
- *Require all sex offenders disclose internet accounts (one of the main recruiting grounds for minors is on social media sites; requiring registration of internet accounts will prevent sex traffickers from using this communication tool);*
- *Prohibit use of sexual history to impeach or prove criminal liability of trafficked victims.”<sup>13</sup>*

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<sup>13</sup> CASEAct.org

Appendix B

**COUNTY UNVEILS ANTI-CHILD SEX TRAFFICKING CAMPAIGN**



Los Angeles County Supervisor Don Knabe joined local law enforcement officials, Metro executives and local businesses to unveil a multimedia awareness campaign aimed at informing the public about the heinous crime of child sex trafficking.

The campaign, originally called for by Supervisor Knabe, will appear at Metro train stations and bus stops, as well as on all rail cars, trains and over 3,000 buses in both English and Spanish. Thanks to a generous donation by Clear Channel Outdoor, over 50 digital displays and 15 traditional billboards will broadcast the message across Los Angeles County.

“This campaign is a first step in raising the public profile of child sex trafficking and finding a way to protect these young victims,” said Supervisor Knabe. “This is a great example of government and the private sector working together to shine a light on a travesty that is happening right here in Los Angeles County communities and neighborhoods. Together, we are saying, ‘No more. Not in our streets. Not to our young girls.’”

Metro released 77,000 brochures on child sex trafficking in early April, 2012. The brochures include basic facts, tips on how to recognize victims and what steps to take. At the end of April, 15,000 brochures also were released on Metrolink trains. All ads and posters include a QR code which, when scanned by a smartphone, will direct people to the Metro website for more information on what they can do to help fight child sex trafficking.

“Metro applauds the leadership of Supervisor Don Knabe in launching the campaign to fight child sex trafficking, and we encourage our many riders to be vigilant in telling Sheriff’s deputies or Metro employees if they see suspicious activity on our buses, trains and in our stations,” said Metro CEO Art Leahy.

Los Angeles County is also proud to partner with Clear Channel Outdoor to take its anti-child sex trafficking message to millions of residents.

“Child sex trafficking is a horrible and growing problem in Los Angeles county and Clear Channel applauds the work of Supervisor Knabe and the County to bring attention to this problem in order to encourage residents to take action to protect vulnerable children,” said Clear Channel Outdoor’s Southern California Division President Lee Ann Muller. “Clear Channel is honored to partner on this campaign to communicate this critically important public safety message so we, as a community, can save children from being sexually exploited.”

The digital displays will begin running the anti-child sex trafficking campaign today; traditional billboards will begin on June 4, 2012.

<http://www.publicceo.com/2012/06/county-unveils-anti-child-sex-trafficking-campaign/>

6/2/2012

THE DISSOLUTION OF REDEVELOPMENT IN ORANGE COUNTY

## **THE DISSOLUTION OF REDEVELOPMENT:**

**Where Have We Been? What Lies Ahead?**



**GRAND JURY 2011-2012**

## THE DISSOLUTION OF REDEVELOPMENT: Where Have We Been? What Lies Ahead?

*“The end of RDAs earlier this year represented a major change in California finance. Over time, schools and other local governments will receive significantly more property tax revenues—and fewer funds will be reserved for redevelopment purposes. While the process for unwinding these complex agencies’ financial affairs will be lengthy, it likely will launch important civic debates about the use of local property tax revenues and the role of government in promoting economic development and providing affordable housing.”*

*California Legislative Analyst’s Office  
February 17, 2012*

*“As the decree to kill redevelopment takes effect, the Capitol is buzzing with efforts to bring it - or something like it, or some substitute - back.”*

*Dan Walters  
Sacramento Bee Columnist  
February 13, 2012*

### SUMMARY

On February 1, 2012, all redevelopment agencies in California were dissolved and a transition process for managing their financial affairs began. Prior to February 2, 2012, Orange County Redevelopment Agencies received over \$400 million annually in property tax revenues and had debt obligations exceeding \$2 billion. This 2011-2012 Grand Jury report provides information on operational and performance data for each of the 24 city-operated agencies in the county. Included is the debt contained in the city’s respective lists of enforceable obligations, representing the amounts that must be paid before the projects are complete. The dissolution legislation (ABX1 26)<sup>1</sup> contains very specific instructions on winding-down this complex financial system. The current legislation has created new responsibilities for the County Auditor-Controller as well as the Board of Supervisors.

Since redevelopment agencies per se no longer exist, few findings or recommendations related to the operational data will be discussed herein. The 2011-2012 Grand Jury presents this information primarily to help in understanding the scope and complexity of the system. Since there will be very little new development, many issues are no longer relevant. The findings and recommendations will, therefore, focus primarily on issues facing the cities during the transition and preparing for whatever replacement system might be in the future. Included topics are:

- The lack of effective oversight over redevelopment programs in the past;
- The need for proactive planning to prepare for a “new redevelopment” program including suggestions for a different redevelopment model;

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<sup>1</sup> Assembly Bill ABX1 26, passed 6/28/2011 in an Extraordinary Session, dissolved Redevelopment Agencies in California.

# The Dissolution of Redevelopment in Orange County

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- The need to recognize fatal errors made with respect to the recently dissolved redevelopment program and suggestions for modification in planning for possible replacement programs; and
- The need for formal policies and procedures for citizen involvement in redevelopment and a non-judicial method for handling complaints and disputes.

Currently at least three bills are making their way through the legislative process. In addition to clarifying the language in the dissolution legislation (ABX1 26), the bills recently introduced appear to represent an effort to continue with at least the low-income housing side of redevelopment. It is expected this part of redevelopment will continue to operate, not only in continuing projects under way, but may also fund new low-income housing projects where funds are currently available to the successor agencies.

## **PURPOSE**

In September 2011, this 2011-2012 Orange County Grand Jury study was initiated as an effort to identify what worked well and what did not work well in the Orange County Redevelopment community. At that time, redevelopment in California had been dissolved by ABX1 26 enacted by the State Legislature on June 28, 2011. A companion bill, ABX1 27, gave the agencies the option of continuing to operate if they agreed to pay the state a substantial amount of money in 2011 and lesser amounts in 2012 and beyond. Most of the cities with redevelopment agencies had already made the decision to pay and continue in the redevelopment business. However, the California Redevelopment Association (CRA) and League of California Cities challenged both ABX1 26 and ABX1 27 as unconstitutional and the legislation was placed on hold pending decision by the California Supreme Court.

The expectation at that time was that the Supreme Court would either grant or deny the CRA petition on both bills. To the surprise of many, this did not happen. The bills, enacted by the legislature as severable, were in fact separated. The court decision on December 28, 2011 supported the state's ability to dissolve redevelopment through ABX1 26 and denied the means to bring it back on a "pay to play" basis through ABX1 27.

The 2011-2012 Orange County Grand Jury explored the legislative events leading to the dissolution of redevelopment in more detail later in this report beginning on page 18.

What began as a study to examine redevelopment in Orange County, with a view toward addressing problems, has changed focus because of the recent court decision. The new focus is on the dissolution of the redevelopment programs, management of the transition, and encouraging local planning for whatever new program might take its place.

The revised purpose is threefold:

- Identifying the major problems that led to the legislation terminating redevelopment;
- Assessing the management responsibilities of successor agencies, oversight boards, and County offices in winding down redevelopment projects; and
- Proposing a planning effort by local government to prepare for a likely legislative effort to introduce a new version of redevelopment in the state.

# The Dissolution of Redevelopment in Orange County

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## METHODOLOGY

In addition to a county-operated agency, the redevelopment agencies in twenty-four cities in Orange County were dissolved on February 1, 2012. All of these cities were asked to participate in two surveys to determine certain facts and make statistical comparisons among agencies.

To understand the legal and financial complexities of redevelopment, particularly with respect to “tax increment funding,” staff from the Auditor-Controller’s Office and the County Assessor were interviewed for their perspectives on various aspects of redevelopment.

Other information for the report was obtained from:

- Redevelopment report published by the State Controller dated December 31, 2010;
- Redevelopment report published by the State Controller dated November 2, 2011;
- Interviews with redevelopment staff from the County’s Community Resources Department;
- Interviews with redevelopment staff from the cities of Brea, Buena Park, Garden Grove and Westminster; and
- Various documents included as references in this report.

## BACKGROUND AND FACTS

On February 1, 2012, Redevelopment Agencies (RDAs) in California were dissolved. Now a transition process is in place to begin unwinding the complex financial affairs of these agencies. Given the scope of their resources and obligations, this transition will take time. Prior to February 1, 2012, redevelopment agencies in Orange County were receiving nearly \$400 million annually in property tax revenues and had debt obligations exceeding \$2 billion.<sup>2</sup>

### What is Redevelopment?

Simply stated, redevelopment is a method of financing city or county improvements by borrowing money (normally through tax allocation bonds) to finance a project in an area that has been declared “blighted,” usually by a consultant hired by the city. The debt is paid with “tax increment revenue” that represents the difference between property taxes assessed prior to the development project (the frozen base value) and taxes assessed after the improvement. This “tax increment” goes to the Redevelopment Agency as revenue. The debt on construction projects can run for long periods of time; thus the increase in assessed value and taxes collected can be substantial. Since the shared tax rate is frozen at the level when the project area was developed, all tax increases for the life of the project theoretically go to the Redevelopment Agency. This results in a loss of revenue for schools, community colleges, the county and special districts. To address this problem, many redevelopment agencies prior to 1994 negotiated “pass-through payments” to those tax supported entities as compensation for the potential loss in revenue. In 1994, legislation was introduced requiring RDAs to make pass-through payments in amounts determined by a defined formula.

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<sup>2</sup> Chiang, John - *State Controller’s Annual Report*, November 3, 2011, page 146

# The Dissolution of Redevelopment in Orange County

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## How is a Project Area Created or Expanded?

The usual first step is for the city or agency to hire a consultant to conduct a study to determine if an area suffers from physical and economic blight. Critics allege that State law is vague on the definition of blight so that almost anything can be considered blighted. The law<sup>3</sup> defines “blight” basically as one or more of the following conditions:

- Physical blight such as buildings that have deteriorated or are unsafe for persons to live or work;
- Economic blight such as depreciated or stagnant property, abnormally high business vacancies, abandoned buildings, residential overcrowding or an excess of businesses that lead to problems of public safety and welfare.
- Blight applicable to areas for closed military bases such as the Marine Corps Air Station at El Toro.<sup>4</sup>

A more complete legal definition of blight can be found later in this report beginning on page 5.

## A Brief History of Redevelopment

In 1945 during the aftermath of World War II, the California Legislature authorized the formation of community redevelopment agencies as a way to alleviate urban decay. The Community Redevelopment Law was intended to help local governments revitalize “blighted” communities.

During the 1950s and 1960s, not many cities established redevelopment agencies. The project areas were small, typically less than 100 acres. The modest beginnings were somewhat controlled by the competing interests for property tax revenues, particularly from schools and community college districts that normally receive about half of any property tax increase. Community interest in education therefore served as a fiscal check on redevelopment expansion.

Then two things happened. First, passage of SB 90, the Dills bill in 1972 that guaranteed each school district an overall funding level from local property taxes and state sources combined. This meant that if there was a funding shortfall at the local level, the state would “backfill” to meet the guaranteed funding level. The second was the passage of Proposition 13 in 1978 that significantly constrained local government’s ability to raise property taxes. These measures did not, however, change local authority over redevelopment. With less revenue raising authority, cities saw redevelopment as a way to generate additional funds through tax increment revenue. No longer were project areas limited to small sections of communities. Cities now adopted areas consisting of hundreds or thousands of acres frequently including farmland or other large tracts of vacant land. By 2009, approximately 12 percent of property tax revenues were going to redevelopment agencies. The state’s costs to backfill K-14 districts now exceeded \$2 billion annually.<sup>5</sup>

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<sup>3</sup> § 33031, subdivisions (a) and (b) of the Health and Safety Code

<sup>4</sup> See Health and Safety Code Sections 33492 et. seq.

<sup>5</sup> O’Malley, Marianne, Legislative Analyst’s Office – February, 2012

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# The Dissolution of Redevelopment in Orange County

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## Revenue Shifts to Schools

In the early 1990s, the state used the annual state budget process to require RDAs to shift part of their revenues to schools. The funds were deposited into countywide accounts referred to as “ERAF” (Educational Revenue Augmentation Fund) or “SERAF” (Supplemental Educational Revenue Augmentation Fund). These shifts in funds occurred nine times between 1992 and 2011. Concerned over these perceived “raids” on “their” redevelopment funds, the redevelopment community joined forces with those objecting to the state dipping into local transportation funds and sponsored Proposition 22. This initiative, approved by voters in November 2010, limited legislative authority over redevelopment and prohibited the state from requiring RDAs to make the supplemental shift of funds to the schools over and above the required pass-through payments. This proposition later served as the basis for the California Redevelopment Association’s court challenge to ABX1 27.

## ANALYSIS

### Redevelopment’s Reputation

The subject of redevelopment has a polarizing effect. To find a balanced perspective regarding redevelopment is difficult as most of those who articulate the subject have a bias favoring their point-of-view. A case in point is a publication, “Redevelopment: the Unknown Government”<sup>6</sup> originally published in 1996 by “Municipal Officials for Redevelopment Reform” (MORR). This report is singularly critical of redevelopment and offers a set of arguments as perceived by the “anti-redevelopment” group.

### Definition of Blight

According to the MORR report, *“all a city needs to do to create or expand a redevelopment area is to declare it blighted. This is easily done. State law is so vague that most anything can be designated as blight.”*

*“To make a finding of blight, a consultant is hired to conduct a study. New development areas are largely driven by city staffs, which choose the consultant with the approval of the city council. Consultants know their job is not to determine if there is blight, but to declare blighted whatever community conditions may be.”<sup>7</sup>*

The legal definition of blight is contained in § 33031, subdivisions (a) and (b) of the Health and Safety Code. These conditions, as described by statute, are summarized as follows:

- The existence of buildings in which it is unsafe or unhealthy for persons to live or work;
- The presence of conditions that prevent or substantially hinder the viable use or capacity of building or lots; and

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<sup>6</sup> Municipal Officials for Redevelopment Reform (MORR), *Redevelopment: the Unknown Government*

<sup>7</sup> Ibid

## The Dissolution of Redevelopment in Orange County

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- The existence of subdivided lots that are in multiple ownership and whose physical development has been impaired by their irregular shapes and inadequate sizes, given present general plan and zoning standards and present market conditions.

Subdivision (b) of the same code describes conditions that cause blight. These include:

- Depreciated or stagnant property values;
- Impaired property values due in significant part, to hazardous wastes on the property where the agency may be able to use its authority;
- Abnormally high business vacancies, abnormally low lease rates, or an abnormally high number of abandoned buildings;
- A serious lack of necessary commercial facilities that are normally found in neighborhoods;
- Serious residential overcrowding that has resulted in significant public health or safety problems;
- An area with an excess of bars, liquor stores, or adult-oriented businesses that has resulted in significant public health, safety, or welfare problems; and/or
- An area with a high crime rate constituting a serious threat to the public safety and welfare.

While the law seems clear as to what constitutes blight, it has not always been followed or enforced in application. According to the State Controller, *“legislation has amended the meaning of redevelopment over the years to meet California’s diverse needs. In addition to rehabilitating blighted areas by making property available for new development, various legislative proposals have asked redevelopment agencies to provide shelter for the homeless, establish day care facilities for children, deal with hazardous wastes, fund fire protection, ensure notification of industrial plant and base closures, and fund pension liabilities. Although not all of these requests have become law, the Legislature has permitted redevelopment agencies to engage in these various activities. Redevelopment activities for example, have included providing flood control measures, financing housing for low-income families, assisting in the construction of sports arenas, and operating amusement parks.”*<sup>8</sup>

The overall result of these influences is that, although a well-defined definition of blight exists; little effort is made to control compliance. Redevelopment agencies have been able to justify projects that have little or no relationship to addressing blight. According to the State Controller, ignoring blight as a requirement has not only been allowed, but often is encouraged by the Legislature.

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<sup>8</sup> Chiang, John, *State Controller’s Annual Report*, November 2, 2011, page xiv

# The Dissolution of Redevelopment in Orange County

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## Use of Eminent Domain

“Eminent Domain” is the power of local, state or federal government agencies to take private property for “public use” so long as the government pays “just compensation.” The government can exercise its power of eminent domain even if the owner does not wish to sell his or her property. Under the California Constitution, property and business owners are entitled to have just compensation determined by a jury.<sup>9</sup>

Concerns about the use of eminent domain in redevelopment were reinforced by the U.S. Supreme Court decision in *Kelo v. City of New London (2005)* – in which the court held that taking private property for the purpose of private development (as part of a redevelopment project) satisfied the constitutional “public use” requirement. Following this decision, in the fall of 2005, the California Legislature held a series of joint hearings on redevelopment reform and in 2006 passed several bills to reform redevelopment practices in the state. Of these, SB 1206 (Kehoe) narrowed the statutory definition of “blight,” contained provisions to increase state oversight of redevelopment and made it easier to challenge redevelopment plans through litigation.

Among Orange County redevelopment agencies, eminent domain is a little used practice and has not been a significant problem. Where used, it is considered a last resort or in fact is welcomed by the property owner as the most desirable method of disposing of the property. Out of the 24 agencies surveyed, eight reported that they have eminent domain powers and three have used eminent domain to acquire property in the last five years.

## Operational Data

The information in the following section is based on responses to two surveys sent to the city RDAs, plus information from the reports from the State Controller dated November 2, 2011 and May 1, 2012. Two of the charts, Tax Increment and Administrative Costs, contain data for fiscal 2010-2011. The remaining charts are for fiscal year 2009-2010. The purpose is to provide a comparison among agencies and identify strengths, weaknesses and potential problem areas during the transition period.

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<sup>9</sup> The California Eminent Domain Handbook, [www.eminentdomain.net](http://www.eminentdomain.net)

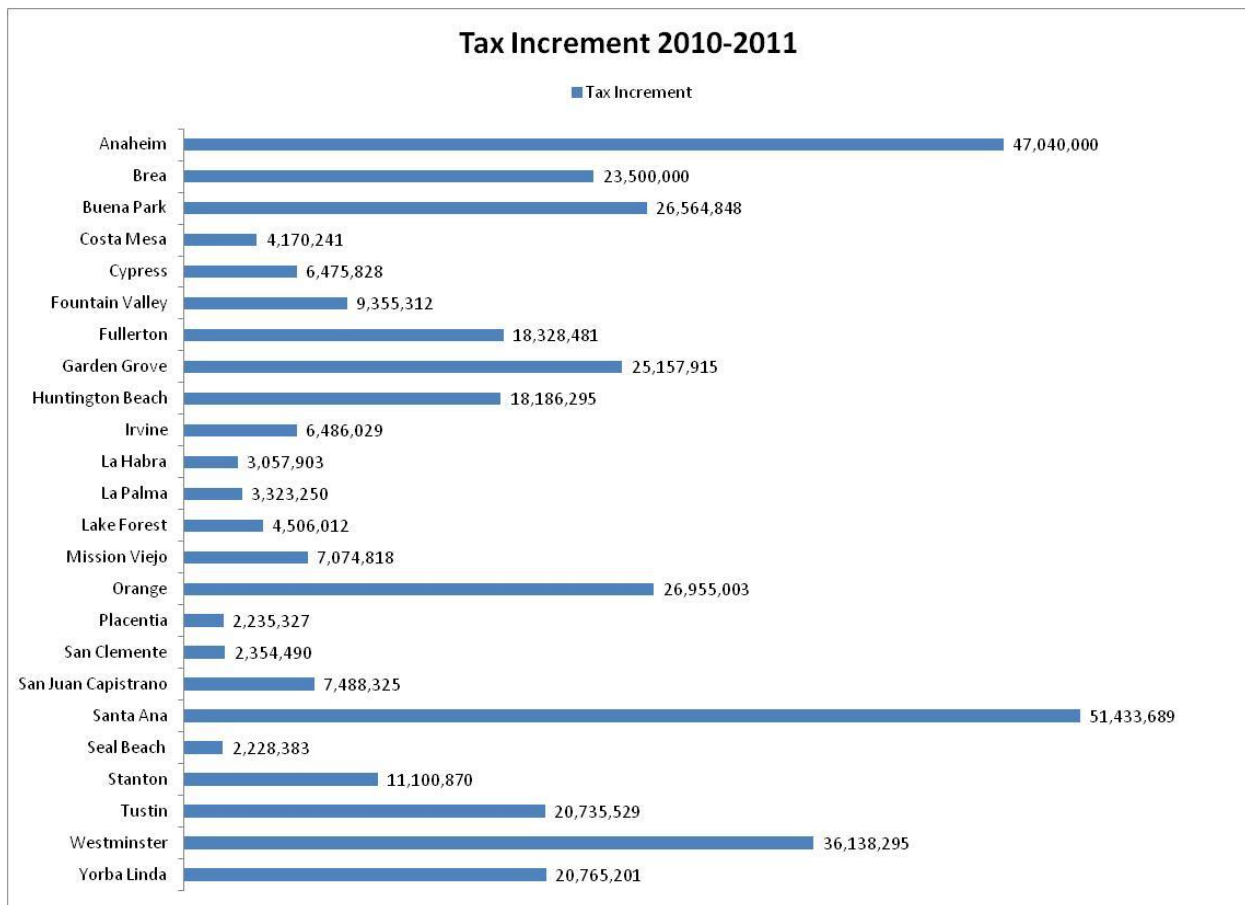
# The Dissolution of Redevelopment in Orange County

## Tax Increment Revenue

The major source of revenue for the former Redevelopment Agencies has been the tax-increment revenue representing the increase in property taxes collected from the frozen base prior to adoption of the redevelopment plan.

Figure 1 (below) displays the amount of tax-increment revenue for each former RDA. The amounts range from a high of \$51,433,689 in Santa Ana to a low of \$2,228,383 in Seal Beach. The average amount for all is \$ 16,027,585.

**Figure 1 – Tax Increment Revenue<sup>10</sup>**



## Total Debt

Although debt has a negative connotation, it is an inherent part of redevelopment. Agencies must have had debt in order to qualify for tax increment revenue.

<sup>10</sup> Based on Grand Jury Survey Number Two and State Controller's Report published 5/1/2012

## The Dissolution of Redevelopment in Orange County

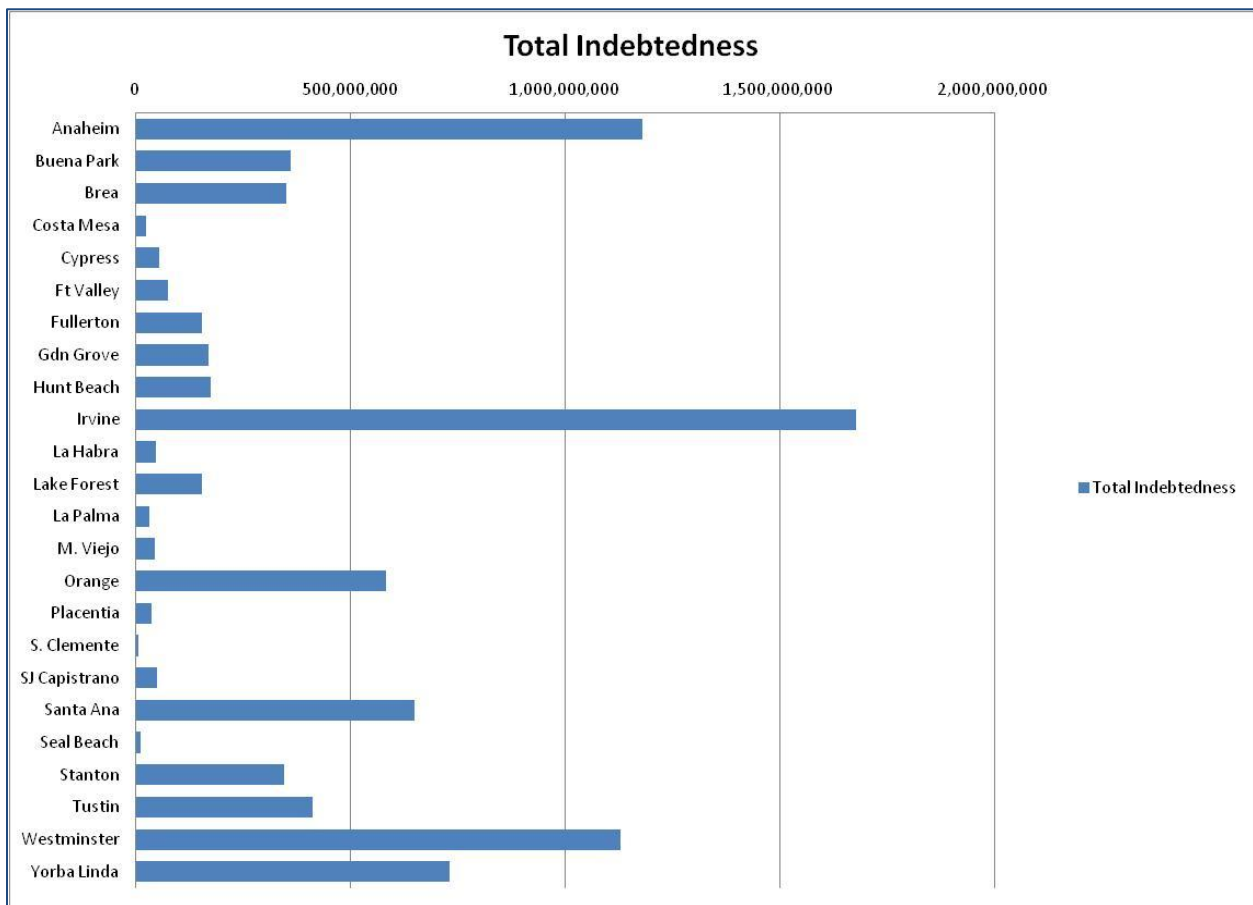
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Figure 2 (below) shows that three cities, Anaheim, Irvine and Westminster each have redevelopment debt in excess of \$1 billion each. An additional three cities, Orange, Santa Ana, and Yorba Linda each have debt in excess of \$500 million. It is expected that all of these will take many years to pay the debt and will, therefore, continue to draw tax-increment revenue until all debt is paid.

Irvine is a unique RDA in that none of the debt is because of a bond issue. Their indebtedness is owed to a private party, Heritage Fields, the developer of the property within the Orange County Great Park redevelopment area. Special provisions exist where the property under development is a former military base subject to provisions beyond the Community Redevelopment Law.<sup>11</sup>

The status of the debt and determination as to the existence of an enforceable obligation will be made by the Department of Finance.

**Figure 2 – Total RDA Debt<sup>12</sup>**



<sup>11</sup> Supra Health and Safety Code Sections 33492

<sup>12</sup> John Chiang, State Controller's Report, November, 2011

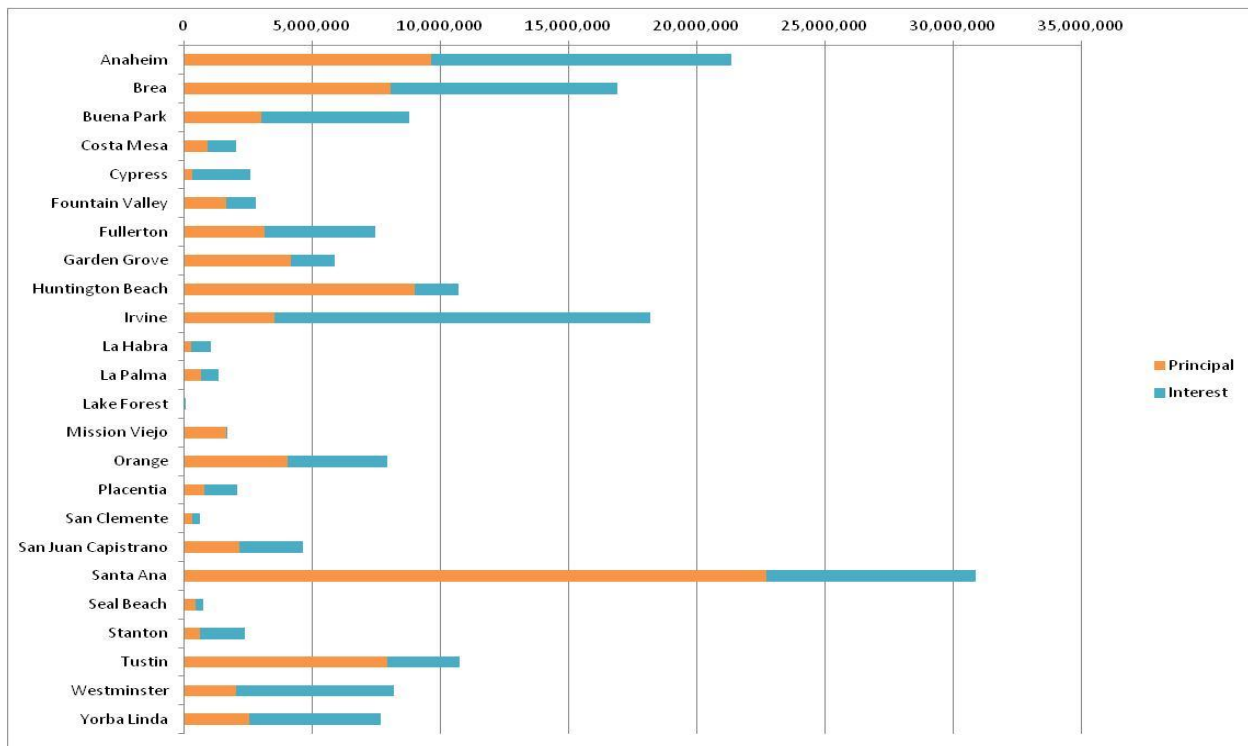
# The Dissolution of Redevelopment in Orange County

## Annual Debt Payment

Figure 3 (below) shows that the city of Santa Ana has the highest annual debt payment, exceeding \$30 million. Anaheim follows with an annual payment of over \$20 million. Brea and Irvine annually pay over \$15 million each with Huntington Beach and Tustin annually paying over \$10 million each.

In the case of Irvine, the total annual payment is for interest, since that is what is currently due.

**Figure 3 – Annual Debt Payments<sup>13</sup>**



## Tax Increment Diversion and Pass-through Payments

Another argument in the MORR report is: “Once a redevelopment project area is created, all property tax increment within it goes directly to the agency. This means all increases in property tax revenues are diverted to the redevelopment agency and away from the cities, counties, and school districts that would normally receive them.”<sup>14</sup>

While this may have been initially true, there have been a number of changes requiring the agencies to share tax increment revenue with school districts, community college districts, special districts, and the county. Prior to 1994, terms of “pass-through” payments between the RDAs and the above tax supported entities were negotiated, usually as settlements of disputes

<sup>13</sup> Supra, Chiang

<sup>14</sup> Municipal Officials for Redevelopment Reform (MORR), *Redevelopment: the Unknown Government*

## The Dissolution of Redevelopment in Orange County

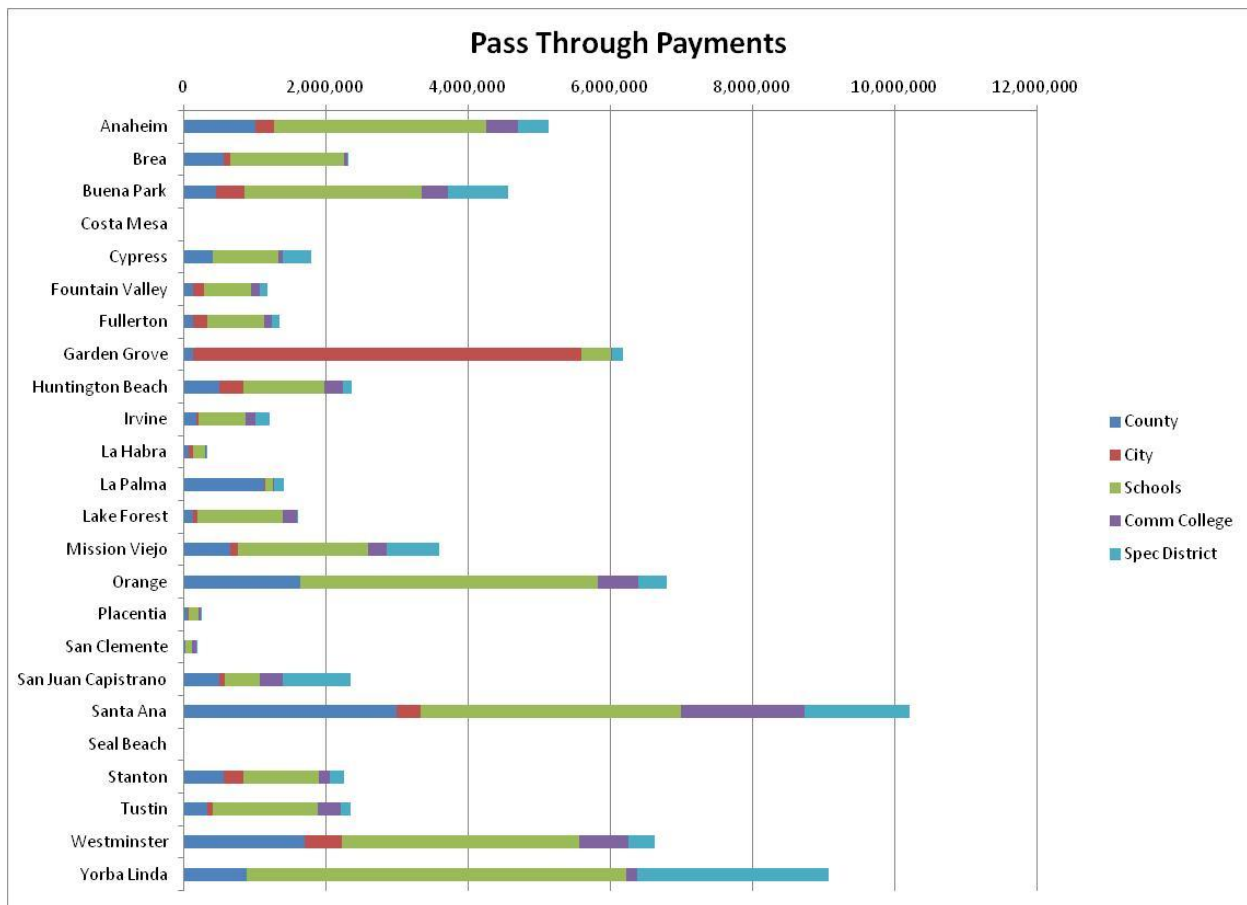
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over contested legality of a proposed project area. These negotiated pass-through payments sometimes provided the County and special districts 100 percent of the tax revenue they would have received without redevelopment. In these cases, the only tax-increment revenue retained by the RDA was the school districts' and cities' share. Since the state backfilled any schools shortfall, no pressure was exerted from that source to check the growth of redevelopment.

In 1993, the legislature passed AB 1290 (Isenberg). This bill eliminated the RDA authority to negotiate pass-through payments, replacing it with a statutory formula to establish the amounts. The bill added school districts and community college districts as recipients of the distribution. The amount each agency receives is based on its proportionate share of the 1 percent property tax rate in the project area.

Figure 4 (below) shows the total pass-through payment for each agency and the proportion paid to each of the receiving agencies.

**Figure 4 – Pass-Through Payments<sup>15</sup>**



<sup>15</sup> Supra, Chiang

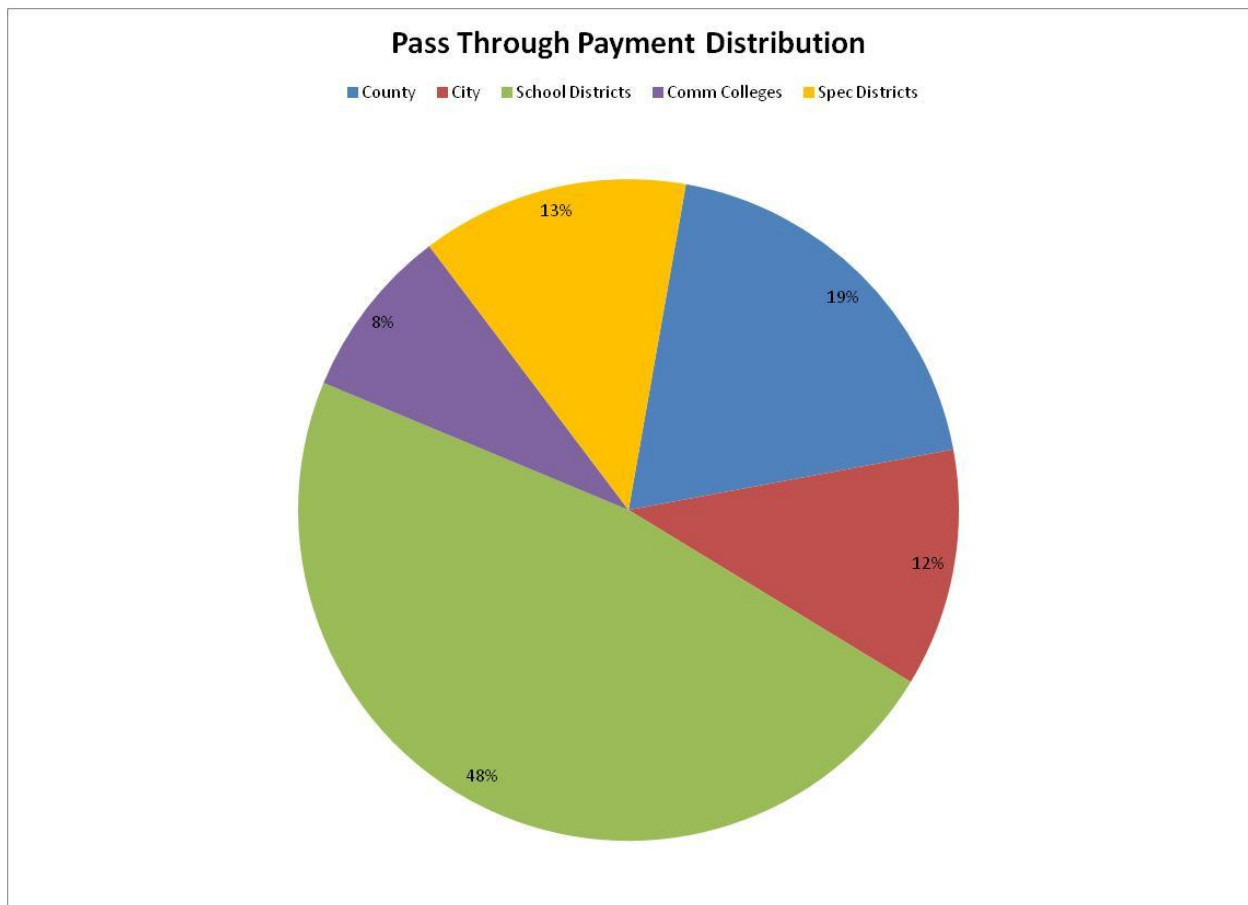
## The Dissolution of Redevelopment in Orange County

The 24 city operated redevelopment agencies paid a total of \$72,969,397 to the County of Orange, school districts, community college Districts and special districts. Figure 4 shows the distribution of the various pass-through payments made.

The total amount represents a little over 18% of the total tax increment. The major portion of these payments, 48%, was to local school districts.

Figure 5 (below) shows the distribution of pass-through payments excluding those made to the Educational Revenue Augmentation Fund.

**Figure 5 – Distribution of Pass-Through Payments<sup>16</sup>**



### **Distribution of Pass-Through Funds:**

Figure 5 shows the distribution of the total pass-through amount paid by city operated RDAs to the various tax supported entities. The distribution of the \$72,969,397 in payments is as follows:

<sup>16</sup> Supra, Chiang

## The Dissolution of Redevelopment in Orange County

- Local School Districts 48% or \$35,025,311
- Orange County 19% or \$13,864,185
- Special Districts 13% or \$ 9,486,022
- Host City 12% or \$ 8,756,328
- Community College Districts 08% or \$ 5,837,552

Figure 6 (below) shows the pass through payments as a percent of the tax increment revenue.

**Figure 6 – Pass-through Payments as a Percent of the Tax Increment<sup>17</sup>**

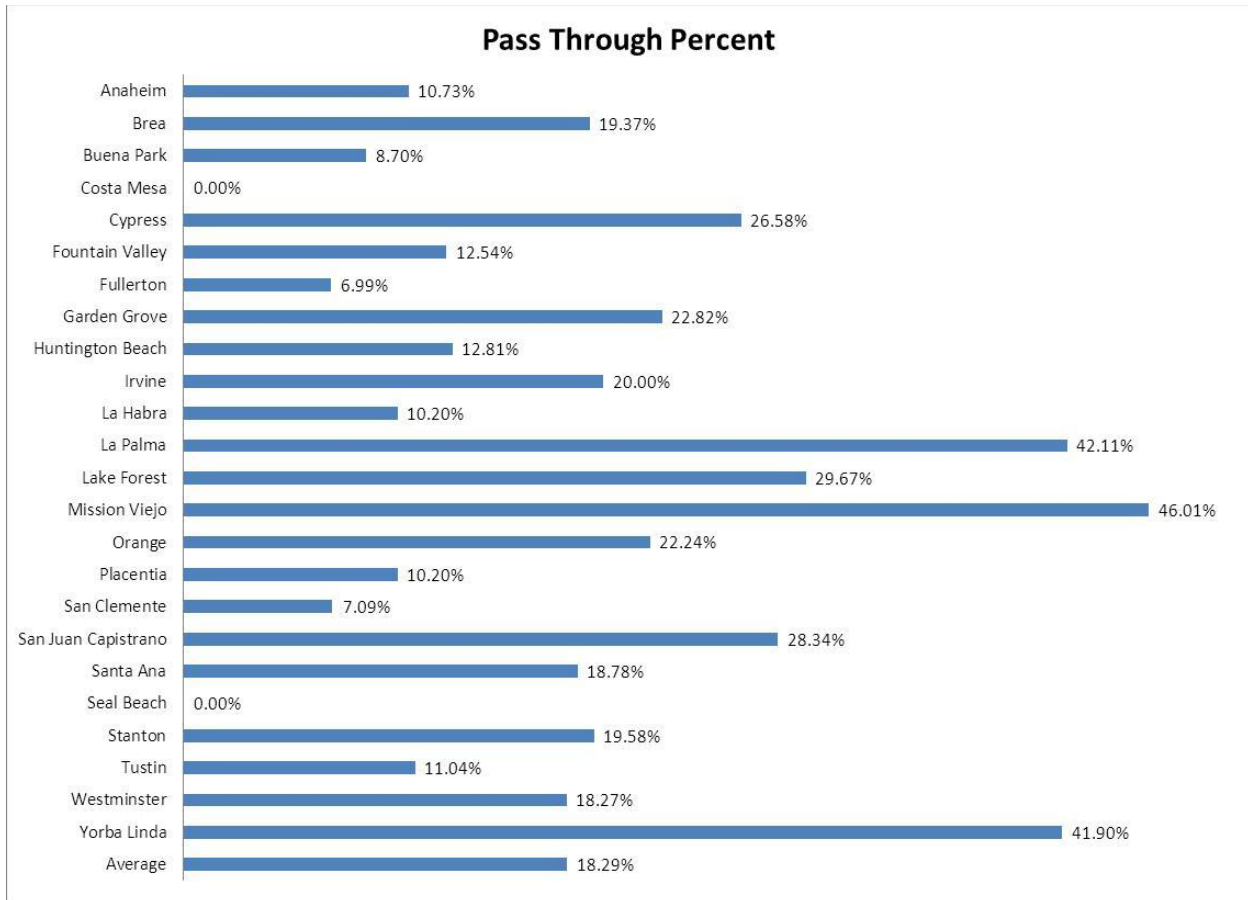


Figure 6 shows pass-through payments, by city, as a percent of the tax increment. Mission Viejo has the highest ratio at 46.01% followed by La Palma at 42.11% and Yorba Linda at 41.9%. Two cities (Costa Mesa and Seal Beach) have no pass-through payments.

While some pass-through amounts are negotiated, most are statutorily mandated. The average pass-through amount percentage of tax increment for all 24 cities is 18.29%

<sup>17</sup> Supra, Chiang

# The Dissolution of Redevelopment in Orange County

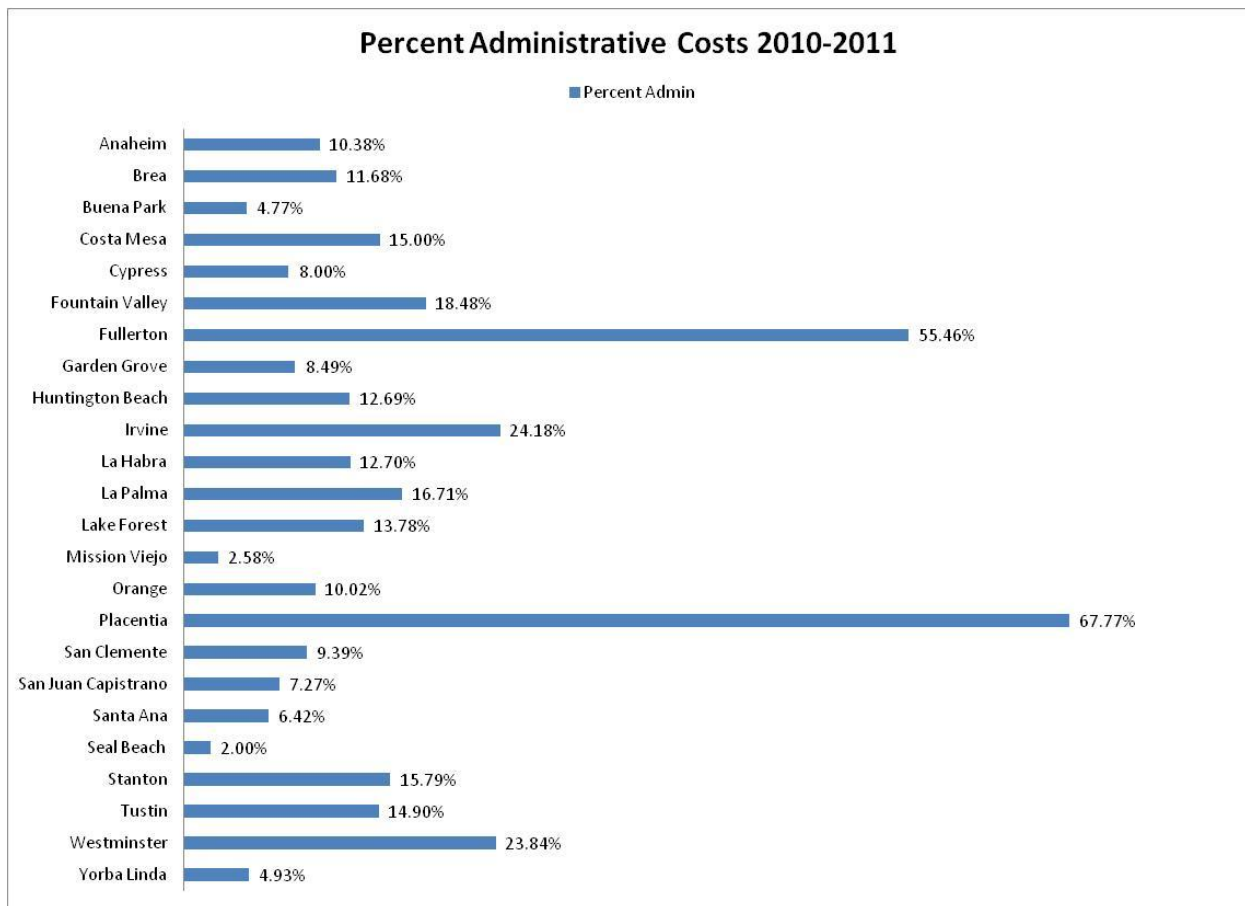
## Administrative Costs

Another common criticism of redevelopment agencies is the high administrative cost. Orange County has a wide variance among RDA's. As illustrated in the graph shown in Figure 7 (below), the costs, expressed as a percentage of the tax increment revenue, range from a low of two percent for Mission Viejo to a high of over 67 percent for Placentia followed by Fullerton at approximately 55 percent.

While certain agencies had a problem with extremely high administrative costs, most agencies were under 30%, and the overall average for all agencies was under 14% for FY 2010-2011.

The dissolution legislation (ABX1 26) introduced, for the first time, a limit on the amount of administrative costs. During the remainder of 2012, such cost is not to exceed five percent of the tax-increment distributed related to the approved ROPS, but not less than \$250,000. The limit for next year and beyond is three percent of ROPS approved tax increment but not less than \$250,000.

**Figure 7 – Administrative Costs<sup>18</sup>**



<sup>18</sup> Supra, Survey Number Two and Chiang

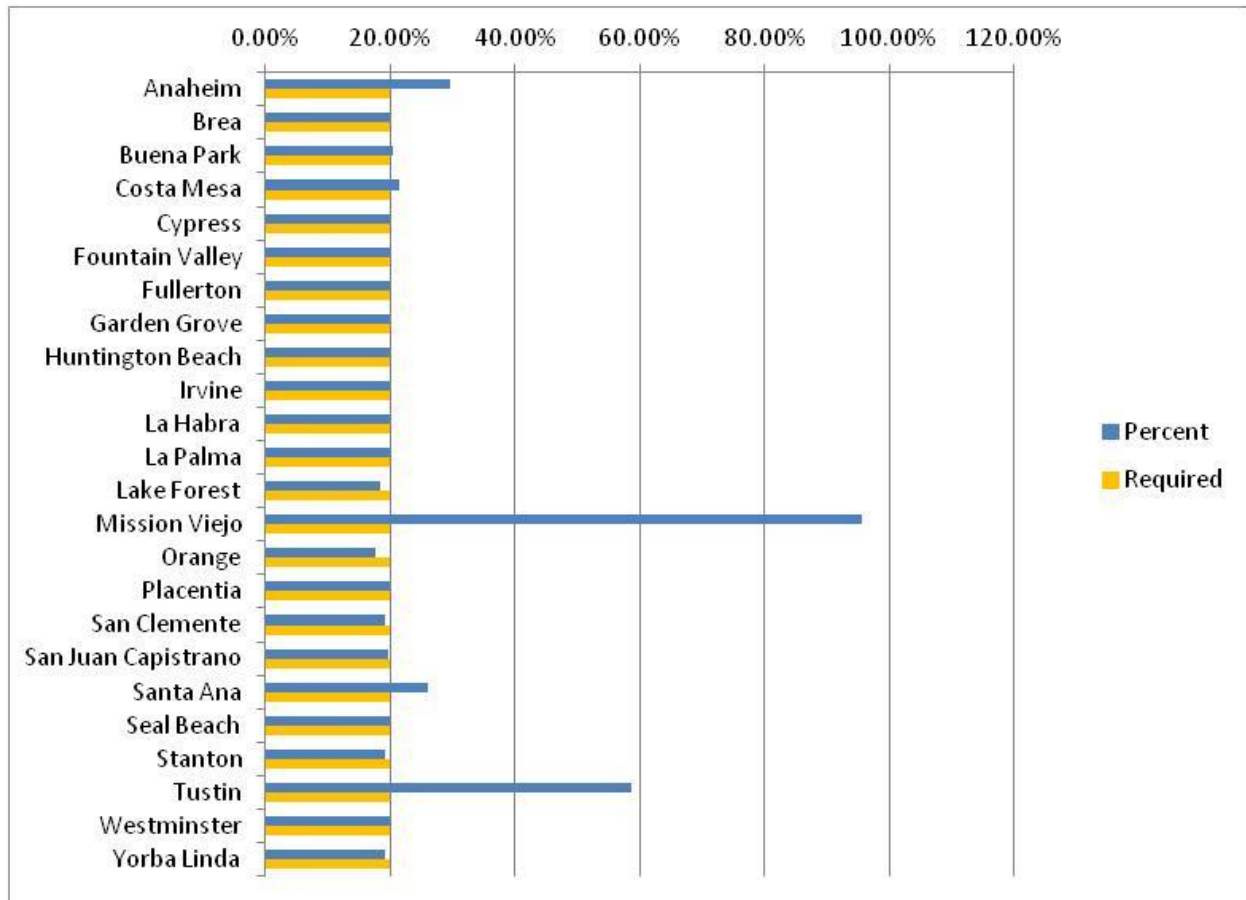
# The Dissolution of Redevelopment in Orange County

## Housing Set-Aside

Redevelopment law requires that at least 20 percent of the tax increment revenue be set aside for the purpose of funding housing programs, primarily for low income families. Some agencies were required to set aside higher amounts. The Anaheim Redevelopment Agency, for example, extended some of the project areas and was required to set aside 30 percent of the tax increment.

Figure 8 (below) shows the percent of the tax increment set aside for each city operated agency.

**Figure 8 – Housing Set-Aside**



Most cities are at or very near the 20% requirement for housing set-aside. Mission Viejo and Tustin are substantially over the requirement. All others are over, at, or within a percentage point of the requirement which may be due to minor reporting differences.

## Citizen Involvement and Review

One of the grand jury survey questions was to determine if the responding agency had a formal mechanism or process for citizen involvement in redevelopment planning. Of the twenty-four agencies surveyed, only Costa Mesa and Santa Ana indicated they had such a process. Most of the remaining agencies described the usual city council approach of posting agendas of meetings

# The Dissolution of Redevelopment in Orange County

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on the internet and allowing public comments (usually three minutes) pertinent to the agenda item.

## **CASE STUDIES**

### **Case Study I – A Successful Redevelopment Project**

The city of Garden Grove, through their former Redevelopment Agency, has completed several successful projects. The most significant of these are those included in the development of Harbor Boulevard, just South of Disneyland. For many years, this corridor had a reputation as the “seedy side” of the tourist district south of Disneyland. Because of the redevelopment projects, according to city officials, drugs and prostitution are less of a problem. In place of the previously existing blight, there are 11 world-class hotels that generate nearly \$12 million in annual hotel tax revenues for the City and that have created approximately 2,000 jobs. The hotels included in these project areas include:

- Hilton Hotel
- Embassy Suites
- Hampton Inn
- Marriott Suites
- Hyatt Hotel
- Sheraton Hotel
- Crown Plaza Hotel
- Candlewood Hotel
- Holiday Inn Express
- Homewood Suites
- Residence Inn

All Garden Grove projects combined produce approximately \$27 million in tax increment revenue. Bond debt payments are approximately \$6 million with another \$6 million shared with schools and other local tax supported entities by way of pass-through payments.

In spite of the fact that Redevelopment Agencies have been dissolved, these projects and the pass-through payments will continue as “enforceable obligations” under management of the Garden Grove Successor Agency and Oversight Board. Payments will be allocated from the Redevelopment Trust Fund by the County Auditor-Controller. Under the dissolution law (ABX1 26) any remaining tax increment funds will be allocated to local schools and other tax supported entities under the general distribution formula.

# The Dissolution of Redevelopment in Orange County

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## Case Study II – A Not-So-Successful Redevelopment Project

The Grove Street Project in Garden Grove however, is another story. The redevelopment plan was to sell a large parcel of property, used as a parking lot for the Main Street businesses, to a private developer for construction and sale of market-value condominiums. On January 22, 2007, the Main Street Business Association filed a petition for a Writ of Mandate in the Orange County Superior Court in an attempt to block the sale. The court judgment denied the writ, and the case was appealed. Although the city won the case on appeal, the entire process lasted about two years. By that time, the real estate market had changed to the point that the developer has thus far not chosen to exercise the option to purchase the property.

The central issue in this matter was a question of the city's right to convey the property to a third-party. Originally, in 1953, the downtown business and property owners formed a Special Benefits District under the State's Streets and Highways Law. It was for the express purpose of acquiring and improving parking lots for the use and benefit of local merchants. Since Garden Grove was not yet an incorporated city, the district was created by the County of Orange and, as the legislative body, title to the property was held by the County. A parking commission was established at the same time to act on behalf of the business and property owners. By mutual consent, the property owners taxed themselves by the highest amount allowable by law to create a Property Acquisition Fund. This was done to finance the purchase of additional parcels of land. Eventually the group acquired and improved six lots to provide parking for downtown businesses.

In 1956, Garden Grove incorporated and title to the parking lots passed from the County to the City.

After the litigation, on July 28, 2009, the city dissolved the parking district including the Parking Commission. It took possession of the remaining parking lots and diverted the parking district property tax assessments directly into the city's general fund.

Recently, the City sold the parking lot parcels to their redevelopment agency for \$2.3 million but the developer has not exercised the option to purchase, so the property remains with the successor agency. This is an example of the type of transaction that will be audited by the CPA firms under contract to the County under the direction of the County Auditor-Controller. If supported by the audit information, the obligation can be included by the Successor Agency in the Recognized Enforceable Obligation Schedule (ROPS) and transmitted to the Department of Finance for approval.

While the courts have ruled that the city owns and can dispose of the property as it chooses, an ethical question remains. The parcels were purchased by property and business owners in downtown Garden Grove. Since the creation of the Special Parking District, these owners, by mutual consent, have paid a property tax assessment on the parking lots for the express purpose of acquiring, improving and maintaining adequate parking for the downtown merchants. Their

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# The Dissolution of Redevelopment in Orange County

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financial investment in this property would seem to have given them a significant voice in the future use or disposition of the property.

## **Analysis of the Garden Grove Case Studies**

The Harbor Boulevard hotel development projects provide a good example as to how redevelopment can work to the benefit of the community without diverting property tax money from other tax supported agencies.

The Grove Street Condominium Project may be a case of overreaching on the part of the City. Early in the planning there is evidence to support the notion that the Downtown Business Association was supportive of the concept of a market-value housing project located next-door to the Main Street business district. In the early plan there were fewer homes and more space dedicated to public parking. Then the project was expanded, and the number of public parking spaces reduced in number causing the Association to withdraw support.

Once the lines were drawn and the lawsuit filed the issue became, and continues to be, highly contentious. Had there been some sort of citizen involvement committee to provide an element of oversight to the Redevelopment Agency, it is possible that some accommodation could have been made among the parties. Failing that, there would have at least been an effort at mediation perhaps avoiding the need for a costly and time-consuming court action. As events unfolded neither party gained. The Association lost the lawsuit but delayed the project. The City won the lawsuit but the delay may have accomplished what the litigation could not.

This project is still in play. Depending on the results of the audit to be performed by July 1, 2012, and the decision of the developer to exercise the purchase option, the project may yet go forward.

## **How Redevelopment Ended**

The Governor's budget for 2011-2012 proposed dissolving the redevelopment agencies in the state and using the property tax increment in the following order of priority:

1. Pay existing redevelopment debt and obligations (such as bonds sold to finance development projects);
2. Continue the pass-through payments to schools and other local tax supported agencies; and
3. Offset \$1.7 billion of state General Fund costs.

Any remaining RDA funds would be allocated to school districts, community college districts and special districts that serve the former project area.

In subsequent years, after debt, obligations and pass-through payments, redevelopment funds would be allocated to local agencies based on their normal property tax shares.

## The Dissolution of Redevelopment in Orange County

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The Governor's proposal introduced as SB 77, changed the distribution of property tax revenues, and therefore required approval by a two-thirds vote of the Legislature. In March 2011 the bill failed by one vote in the Assembly. The debate now focused on ways to allow RDAs to continue, albeit with modifications and with ongoing funding provided to schools. The bill followed existing statutory formulas related to tax allocations and thereby avoided the need for a two-thirds vote for approval.

In June 2011 the Legislature approved, and the governor signed two bills:

- ABX1 26 placed a freeze on all RDA authority to incur new debt, making loans or grants, entering into new contracts or amending existing contracts, acquiring or disposing of assets, or altering redevelopment plans. The bill also dissolved Redevelopment Agencies and created a process for winding down their financial affairs.
- ABX1 27 allowed Redevelopment Agencies to opt into a voluntary alternative program to avoid the dissolution included in ABX1 26. The bill included annual payments to school districts: \$1.7 billion in 2011-12 and about \$400 million in future years, to offset the fiscal effect of redevelopment.

Shortly thereafter, the California Redevelopment Association (CRA) and the League of California Cities filed petitions with the California Supreme Court challenging both bills on constitutional grounds.

On December 29, 2011, the court upheld ABX1 26 saying that the Legislature had authority to dissolve entities that it created. However, the court found ABX1 27 unconstitutional because it required redevelopment agencies to make payments to schools as a condition of continuing to operate. They found specifically that this violated Proposition 22's prohibition against the state requiring an RDA to transfer funds to schools or to any other agency.

### **The Transition Process**

As of February 1, 2012, redevelopment in California, as it was known in the past, is dead as far as new projects are concerned. Now in place is a plan included in the legislation to wind down the redevelopment projects using tax increment revenue only to pay down the debt obligations, continue pass-through payments and cover limited administrative costs. The agencies have been dissolved, and no new projects will be initiated. A last-ditch effort to delay the dissolution failed in the Senate, and the agencies are now in the phase-out mode detailed by the legislature. Successor agencies (usually the city council) will continue to administer existing projects until completed and all indebtedness (bond and contractual) is paid.

Many of the property transfers that occurred after the legislation passed the bill will be reviewed by the State Controller and could be reversed or at least tied up in litigation.



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# The Dissolution of Redevelopment in Orange County

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Housing Successor Agency or elect the Orange County Housing Authority (OCHA) as the Housing Successor Agency.

## **Role of the County Auditor-Controller under ABX1 26**

In the phasing out of the RDAs, the County Auditor-Controller has been assigned new oversight responsibilities. A partial list of those responsibilities is presented here to illustrate the type of oversight to the transition process that will be provided by the County through the remainder of the current fiscal year.

The Auditor-Controller is required to audit each dissolved redevelopment agency's assets, liabilities, and tax-sharing obligations and determine the amount and terms of indebtedness by July 1, 2012. The Auditor-Controller also certifies the initial Recognized Payment Obligation Schedule (ROPS).

Upon the effective date of the legislation, the Auditor-Controller is required to determine the amount of tax increment that would have been allocated to each redevelopment agency which are deemed property taxes by ABX1 26, and must deposit the amount in the Redevelopment Property Tax Trust Fund. The Auditor-Controller administers the Trust Fund for the benefit of the holders of Enforceable Obligations and taxing agencies that receive pass-through payments. From February 1, 2012 to July 1, 2012, after deducting administrative costs and after making tax sharing (pass-through) payments, the Auditor-Controller allocates moneys from the Redevelopment Property Tax Trust Fund to the Successor Agencies.

## **The Audits**

On March 27, 2012, the Orange County Board of Supervisors approved contracts with two CPA firms to conduct audits of all 25 former Redevelopment Agencies in the County. These audits, conducted under the direction of the Auditor-Controller, are required to be completed by July 1, 2012.

As set forth in state law, the purpose of the audits shall be:

*"to establish each redevelopment agency's assets and liabilities, to document and determine each redevelopment agency's pass-through payment obligations to other taxing agencies, and to document and determine both the amount and the terms of any indebtedness incurred by the redevelopment agency and certify the initial Recognized Obligation Payment Schedule"* [Health & Safety Code section 34182(a) (3)].

Following is the timeline for the audits:

- Board approval of contract - March 27, 2012
- Entrance Conference - To be determined
- Status Report - April 30, 2012
- Status Report - May 31, 2012
- Status Report - June 15, 2012
- Exit Conference - To be determined
- Final Reports - July 1, 2012

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# The Dissolution of Redevelopment in Orange County

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Upon receipt of the final reports, the Auditor-Controller will prepare and issue the Agreed-Upon-Procedures Report and distribute to the State Controller by July 15, 2012.

## **What Does the Future Hold?**

Termination of redevelopment in California was not intended or wanted by the State Legislature. While dissolution of redevelopment was part of the governor's budget, the legislature did not agree and passed ABX1 27. This was companion legislation to ABX1 26 and allowed city and county agencies to continue redevelopment programs by paying an annual assessment to the state.

Given the above, it stands to reason that there may be an effort to pass new legislation to bring back some form of tax-increment financing.

While many examples of successful redevelopment projects exist in the county, there are also examples of abuse and poor performance. The major problem identified by this study is three-fold:

- Lack of effective oversight;
- Lack of local citizen input; and
- Lack of a non-judicial means to settle disputes between the city or agency and the citizens.

## **Primary Reason for Dissolution**

The primary reason for the dissolution of redevelopment is the underfunding of school districts at the local level. With the poor economy, it became increasingly difficult for the state to backfill local school funding as required by SB 90 (the Dill's Bill). This gave the state little choice. Either the RDAs had to contribute more to local school funding (which would have occurred under ABX1 27) or be dissolved.<sup>19</sup>

## **Current Redevelopment Agency Oversight**

Although there was no formal system of review or approval of redevelopment plans beyond the agency and city (or county) that created it, the law provided for several oversight mechanisms. Challenges can be brought against redevelopment agencies through litigation or through a referendum process. In addition, the law required redevelopment agencies to report certain activities to the California Department of Finance, the Department of Housing and Community Development and the State Controller's Office.

A 1994 report by the Legislative Analyst's Office found that oversight of redevelopment agency activities comes primarily through legal challenges or referenda initiated by three parties:<sup>20</sup>

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<sup>19</sup> Supra, Legislative Analyst Office, February 2012

<sup>20</sup> O'Malley, Marianne, "Redevelopment after Reform: A Preliminary Look", California Legislative Analyst's Office, December, 1994

## The Dissolution of Redevelopment in Orange County

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- Local taxing agencies including the counties, special districts, and school and community college districts serving the redevelopment project area.
- The state, primarily the state Department of Finance.
- The public, which includes local residents and businesses.

Other than litigation (an expensive option for the general public) the only meaningful oversight agencies have been the State Controller and Department of Finance. The State Controller receives annual financial and operational data and has responsibility of enforcing the Redevelopment Law (a seemingly impossible task given the breadth and scope of redevelopment activities in the state.) For example, redevelopment agencies were required to file an annual financial report with the State Controller and with the Department of Housing and Community Development.<sup>21</sup> Based on the RDAs' financial audit reports, the State Controller was required to compile a list of agencies that appear to have major violations of the Community Development Law. The law establishes a procedure for consultation between the State Controller's Office and RDA, referral of the violation to the Attorney General, a court hearing, and the issuance of court orders and fines designed to remedy violations.

Out of the 422 redevelopment agencies that existed during the 2004/2005 fiscal year, the State Controller's Office found 86 major violations based on the annual reports filed by the agencies. Within the 86 violations, 51 (60 percent) were for failing to adopt an implementation plan, thirteen (15 percent) were for failing to file an audit report and another eight (9 percent) were for "administrative expenditures from the Low and Moderate Income Housing Fund."

The Department of Finance and the State Controller will have an equal role in reviewing and approving the ROPS (Recognized Obligation Payment Schedule) submitted. The following statement appears on the Department of Finance web-site:

*"We encourage redevelopment agencies and their successors to immediately begin work on Recognized Obligation Payment Schedules (ROPS) and in organizing the oversight board. Please forward the names and contact information (as required by Sec. 34179 (h) for the oversight board and the successor agency to the above e-mail address as soon as possible. Please forward the ROPS and any supporting documents to the e-mail address above. If documents are very voluminous, please call and we will discuss other delivery options."*

*"Department of Finance and the State Controller have some overlapping responsibilities and authorities under this statute. We intend to exercise them jointly to the extent possible. Both Controller and Finance staff will be reviewing enforceable obligation schedules and jointly determining which items to review in more detail and make objections to. To the extent we are able to agree, we will provide joint determinations. But both agencies reserve the right to take independent actions."*

*"Agencies should expect to be contacted by phone and e-mail for more information and to answer questions from Finance and Controller employees. We expect that field audits may be necessary in some cases."*

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<sup>21</sup> California Health and Safety Code Section 33378(b)(2)

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# The Dissolution of Redevelopment in Orange County

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*“The State Controller is authorized to recover its costs for activities under this statute from redevelopment property tax. It is our intent to fund their work from this source.”*

The Grand Jury believes this means that effective oversight of over 400 agencies from Sacramento is not a viable concept. Effective oversight needs to be objective, transparent and locally administered.

What about the newly designed oversight boards currently in the selection process? They are certainly at the local level. Perhaps too much so - it has been reported that some mayoral appointments to their oversight board are serving city council members who are also on the Successor Agency Board. Does this mean they will be overseeing themselves? In this regard, the future looks better. In 2016, there will be a single oversight board at the county level.

## **Project Area Committees**

California redevelopment law provided for formation of project area committees to oversee plan adoptions and a limited range of redevelopment activities.<sup>22</sup> This law was primarily to protect low or moderate income persons living within a project area from being displaced through eminent domain actions. However, the committees could also serve as advisory bodies to redevelopment agencies to review plans and make recommendations. If a redevelopment agency did not form a project action committee, it had to adopt a resolution making a finding that formation of such a group is not required. A statement of the specific reasons why the project will not displace a significant number of low-and/or moderate-income persons should support the finding. If a project action committee was to be formed, the law contains a number of provisions that required the agency to adopt procedures to publicize the opportunity to serve on the committee and to assist with its formation.

## **The Next Phase of Redevelopment**

Although Redevelopment Agencies have been dissolved, they have been replaced by “Successor Agencies” and “Oversight Boards” with responsibility for managing existing redevelopment projects until all debt obligations are paid.

## **A Proposed Model for a Replacement System**

Despite the generally poor reputation of redevelopment, Tax Increment Financing remains a powerful tool for funding community improvements. In the event the Legislature passes a bill to resume redevelopment in some form, a model is needed that ensures fair sharing of the tax increment, provides effective oversight to the agencies selected to administer these funds, includes a formal structure for citizen participation and a non-court method of conflict resolution.

The 2011-2012 Orange County Grand Jury believes that it is likely that an offspring of redevelopment is in the making and that it will soon be introduced in the foreseeable future. It seems important, therefore, that local governments begin planning for such a program and develop recommendations to the legislature as to the best possible elements for such a program.

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<sup>22</sup> California Health and Safety Code §33385 et. seq.

# The Dissolution of Redevelopment in Orange County

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Through the Grand Jury's research of the subject and interviews with members of the redevelopment community, some ideas have surfaced that include the following:

- Eliminate "blight reduction" as a requirement for redevelopment or require compliance with the legal definitions contained in the Health and Safety Code.
- Require a formal process for citizen participation and review through Project Area Committees as authorized by §33385 Health and Safety Code.
- Plan for a single oversight agency or body at the County level and give that body authority to require compliance with the law, policies and procedures.
- Use Project Area Committees as a first step to mediate citizen complaints and disputes between agencies and property owners.
- Introduce arbitration as the next tier for settling citizen complaints and property owner claims.
- Suspend use of eminent domain unless all reasonable alternatives, including arbitration, have been exhausted and then, only with the concurrence of the county oversight board.
- Prohibit conveyance to a private party in those instances that justify the use of eminent domain for public purposes.
- Develop formulas for revenue sharing that will ensure school districts, community college districts, special districts and the county, share in the property tax revenue because of a redevelopment project.
- Require a comprehensive performance audit on a bi-annual basis in addition to annual financial audits.

## Pending Legislation

There are currently several bills making their way through the legislative process. Following is a summary of three of those bills providing examples of the nature of discussions taking place in the State Assembly and Senate:

**AB 1585** was introduced March 21, 2012, by Speaker Perez. This bill proposes some clean-up language to the dissolution bill, ABX1 26, and proposes changes to the process of dissolving redevelopment agencies. Included is a requirement that funds on deposit in the Low-and-Moderate-Income Housing Funds remain with the entity that assumes the housing functions rather than being distributed as property tax revenue. The bill proposes a total of 50 items intended to correct or clarify a variety of issues related to the management of the dissolution.

**SB 986** was introduced on January 31, 2012, by Senator Dutton. The bill allows successor agencies to keep former redevelopment agencies' bond proceeds and enter into new enforceable obligations funded by the bond proceeds. By letting successor agencies enter into new enforcement obligations through 2014, SB 986 allows bond proceeds to finance former RDA projects that would not otherwise be completed.

**SB 654** was introduced January 31, 2012 by Senator Steinberg. This bill allows the host city or county of a dissolving redevelopment agency to retain the funds on deposit in the agency's housing fund and expands the types of agency loans from the host city or county considered enforceable obligations.

# The Dissolution of Redevelopment in Orange County

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In addition to clarifying the language in the dissolution legislation (ABX1 26) bills recently introduced appear to represent an effort to continue with at least the low-income housing side of redevelopment. It seems likely therefore that this part of redevelopment will continue to operate not only in completing projects under way but also to fund new low-income housing projects.

## **FINDINGS/CONCLUSIONS**

*In accordance with California Penal Code Sections §933 and §933.05, the 2011-2012 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.*

Because redevelopment agencies no longer exist, findings and recommendations in this report will be limited to matters related to winding down the programs, oversight issues and otherwise promoting the concept of local planning for the next, yet unknown, phase of redevelopment.

The 2011-2012 Grand Jury submits the following ten findings:

**F1.** As of the date of dissolution of redevelopment (February 1, 2012), all city operated redevelopment agencies, except Mission Viejo and Seal Beach, were exceeding the administrative costs limit of 5% of the tax increment distributed related to the ROPS as authorized by ABX1 26.

**F2.** Of the agencies surveyed, only Costa Mesa and Santa Ana reported having a citizen involvement committee along the line of a Project Area Committee as authorized by Section 33385 of the Health and Safety Code.

**F3.** Historically, external oversight over redevelopment has been missing or ineffective in monitoring redevelopment agency compliance and performance. The newly formed oversight boards offer a potential to improve on that record by providing critical evaluation of existing projects and management of the successor agency debt.

**F4.** The Orange County Auditor Controller has an expanded role in managing the tax-increment revenue. The implementation of ABX1 26 includes a requirement that all former redevelopment agencies in the county be audited to determine the accuracy of the information supporting agency claimed enforceable obligations. It has been determined that the County will contract with external auditors to accomplish this task under the direction of the Auditor-Controller.

**F5.** The Orange County Board of Supervisors has an expanded role in the management of the transition of redevelopment. They have a responsibility to make appointments to all oversight boards in the County. Ultimately, in 2016, there will be a single oversight board over all successor agencies in the County. The Board is also responsible to approve and oversee the external audit contracts to be managed by the Auditor-Controller.

## The Dissolution of Redevelopment in Orange County

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**F6.** It is highly likely that new legislation will pass expanding the scope of the low to moderate income housing programs and ultimately a replacement program for redevelopment itself. Local governments should take a proactive approach in planning and shaping its return.

**F7.** Ending redevelopment changes the distribution of property tax revenues among local agencies, but not the amount of tax revenues raised.

**F8.** Prior to the dissolution of redevelopment, some agencies encumbered debt to their cities, thereby creating questionable enforceable obligations.

**F9.** Some former RDAs (such as Brea and Buena Park) have incentive payments to commercial entities as enforceable obligations.

**F10.** The city of Garden Grove failed to adequately address citizen concerns in the pursuit of development of the parking area on Grove Street, west of historic Main Street.

### RECOMMENDATIONS

*In accordance with California Penal Code Sections §933 and §933.05, the 2011-2012 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, with a copy to the Grand Jury.*

Based on its investigation of City Redevelopment Agencies in Orange County, the 2011-2012 Orange County Grand Jury makes the following six recommendations:

**R1.** All successor agencies should review administrative costs to ensure compliance with the limit of five percent of the tax-increment or less as required by ABX1 26 and develop a plan to reduce these costs to three percent of the tax increment received or less in 2012-2013. If these percentages fall below \$250,000, the agencies are allowed to claim the higher amount. (See F1)

**R2.** Successor agencies and oversight boards should review the Recognized Obligations Payment Schedule with a view toward limiting the range of projects and obligations thereby retiring the enforceable obligation debt as quickly as possible. (See F3)

**R3.** The Orange County Board of Supervisors should appoint a committee to study possible replacement programs for redevelopment and use legislative influence to help shape the next generation of redevelopment in the likely event such a program is passed by the Legislature. (See F6)

**R4.** Successor agencies and oversight boards should critically review the Recognized Obligations Payment Schedule (ROPS) to evaluate the need for debt owed to the city. (See F8)

**R5.** Successor agencies and oversight boards should critically review the Recognized Obligations Payment Schedule (ROPS) to evaluate the need for incentive payments to commercial entities. (See F9)

## The Dissolution of Redevelopment in Orange County

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**R6.** The city of Garden Grove should resume negotiations with the Downtown Business Association to come to an agreement on the scope of the Grove Street Condominium Project including the availability of a suitable number of convenient public parking spaces to meet the needs of the downtown merchants. (See F10)

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

## The Dissolution of Redevelopment in Orange County

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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.

The City Councils of the cities listed on pages 31 and 32, as well as the Board of Supervisors and Auditor-Controller, are required to respond to the findings and recommendations in this report, as listed in the response matrices on pages 31 and 32.

# The Dissolution of Redevelopment in Orange County

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## FINDINGS – RESPONSE MATRIX

Respondent	F1	F2	F3	F4	F5	F6	F7	F8	F9	F10
Anaheim	X	X	X							
Brea	X	X	X						X	
Buena Park	X	X	X						X	
Costa Mesa	X	X	X							
Cypress	X	X	X							
Ft Valley	X	X	X							
Fullerton	X	X	X							
Garden Grove	X	X	X							X
Hunt Beach	X	X	X							
Irvine	X	X	X							
La Habra	X	X	X							
Lake Forest	X	X	X							
La Palma	X	X	X							
Mission Viejo	X	X	X							
Orange	X	X	X							
Placentia	X	X	X							
S. Clemente	X	X	X							
SJ Capistrano	X	X	X							
Santa Ana	X	X	X							
Seal Beach	X	X	X							
Stanton	X	X	X							
Tustin	X	X	X							
Westminster	X	X	X							
Yorba Linda	X	X	X							
Auditor-Controller				X			X	X	X	
Board of Supervisors					X	X				

## The Dissolution of Redevelopment in Orange County

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### RECOMMENDATIONS RESPONSE MATRIX

Respondent	R1	R2	R3	R4	R5	R6
Anaheim	X	X		X	X	
Brea	X	X		X	X	
Buena Park	X	X		X	X	
Costa Mesa	X	X		X	X	
Cypress	X	X		X	X	
Ft Valley	X	X		X	X	
Fullerton	X	X		X	X	
Garden Grove	X	X		X	X	X
Hunt Beach	X	X		X	X	
Irvine	X	X		X	X	
La Habra	X	X		X	X	
Lake Forest	X	X		X	X	
La Palma	X	X		X	X	
Mission Viejo	X	X		X	X	
Orange	X	X		X	X	
Placentia	X	X		X	X	
S. Clemente	X	X		X	X	
SJ Capistrano	X	X		X	X	
Santa Ana	X	X		X	X	
Seal Beach	X	X		X	X	
Stanton	X	X		X	X	
Tustin	X	X		X	X	
Westminster	X	X		X	X	
Yorba Linda	X	X		X	X	
Auditor-Controller				X		
Board of Supervisors			X		X	

# The Dissolution of Redevelopment in Orange County

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## APPENDIX – GLOSSARY OF TERMS

AB1X 26	-	Legislation Dissolving Redevelopment in California Upheld by California Supreme Court on 12/28/2011
AB1X 27	-	Bill Intended to Allow Redevelopment to Continue on a “Pay to Play” basis Struck down by California Supreme Court on 12/28/2011
CRA	-	California Redevelopment Association
EOPS	-	Enforceable Obligations Payment Schedule
ERAF	-	Educational Revenue Augmentation Fund
MORR	-	Municipal Officials for Redevelopment Reform
Pass-Through	-	Payment from Tax Increment Revenue to other agency
RDA	-	Redevelopment Agency
ROPS	-	Recognized Obligations Payment Schedule
SERAF	-	Supplemental Educational Revenue Augmentation Fund
Tax Increment	-	Difference between property tax before and after redevelopment

SANTA ANA'S PROPERTY BASED IMPROVEMENT DISTRICT

**CITY OF SANTA ANA**  
**SPECIAL ASSESSMENT DISTRICT**



**GRAND JURY 2011-2012**

2011/2012 ORANGE COUNTY GRAND JURY

# SANTA ANA'S PROPERTY BASED IMPROVEMENT DISTRICT

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## CITY OF SANTA ANA SPECIAL ASSESSMENT DISTRICT

### **SUMMARY:**

In July of 2011, the Orange County Grand Jury received a complaint requesting that it conduct an inquiry into the establishment of a Community Management District (CMD) in the City of Santa Ana, Ca. Such specially established assessment districts are frequently referred to as "Property Based Improvement Districts" or PBIDs.

After a preliminary investigation, it appeared that certain irregularities took place regarding the election process that established the district. It was also alleged that a sufficient number of property owners within the district objected to the process and have sought relief through a petition to "disestablish" the district and filed a petition to do so with their elected representatives on the Santa Ana City Council. This petition has been repeatedly re-calendared by the Santa Ana City Council without making any definitive decisions as to the substance of the petition. These actions or lack thereof, have prevented these petitioners from receiving their rightful consideration.

### **METHODOLOGY:**

The 2011-2012 Orange County Grand Jury took the following steps to investigate the citizen's complaint letter. They:

- Compiled and read documents related to the complaint;
- Interviewed by phone and in person individuals related to the complaint;
- Interviewed city officials;
- Researched public documents relating to ethics of public officials;
- Reviewed applicable statutes and case law;
- Evaluated the compiled information; and
- Generated this report.

### **HISTORY:**

For many years, almost from its very inception, the City of Santa Ana has had a downtown shopping and business district known as "Fourth Street." It has a long cultural history of Hispanic influence and atmosphere.

Approximately twenty-five (25) years ago, it came to be known as the "Fiesta Marketplace", a reference to a business entity which began private development in the immediate area. Fiesta Marketplace initially consisted of majority and minority partners, each of whom owned various parcels of commercial property within the immediate vicinity of this "downtown" area. The "Fiesta Marketplace" originated in 1985 for the purpose of the general improvement of Fourth Street. Some of the improvements were to be financed through various funding sources

## SANTA ANA'S PROPERTY BASED IMPROVEMENT DISTRICT

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including the United States Department of Housing and Urban Development, as well as tax-exempt bonds.

While the original intent appeared to be an effort to preserve the area's Hispanic and cultural identity, subsequent efforts began to erode the very proposition that was supposed to preserve this "redevelopment" area.

By 2006 and 2007, actions by the city and the developers were perceived as efforts to "gentrify" the downtown area in what one newspaper reporter referred to as an "obvious effort to replace the city's Mexican themed atmosphere with something more in keeping with a yuppie clientele." Additional planning proposals included efforts to change the housing and business identities of the downtown area with the addition of new apartment and condominium projects. Some citizens saw this as a "Forced Gentrification Plan" along with other descriptions such as the "Remove the Poor Mexicans from Downtown Santa Ana Plan."<sup>1</sup>

Under any terms or descriptions, the changes being proposed were destined to create a cultural conflict. As explained by the city planners in the "Renaissance Plan", "The community's heritage needs to be celebrated to express and enjoy the important aspect of daily life. Often when communities forget their past they lose their cultural meaning and stand to seriously dilute any future identity."<sup>2</sup>

In response to the concerns being voiced, by 2008, city officials were making promises to amend their earlier redevelopment plans giving more consideration to the cultural history of the downtown area.

But in 2008, the City of Santa Ana initiated a program that offered financial rebates to the business owners in the downtown area to improve the facades of their buildings. The "Fourth Street Façade Program" allocated one million, two hundred and fifty thousand dollars (\$1,250,000) for improvements to building fronts with a supposed limitation of \$75,000 per storefront. However, for various reasons, the money went to only three (3) property owners:

CM Theater LP (West End Theatre).....	\$ 63,814.77
Gumm & Livingston Investments (Pacific Building).....	\$110,191.00
Fiesta Marketplace Partners (S & A Properties).....	\$765,000.00

The vast majority of these rebate dollars went to the same property owners/developers who comprised the majority interest in the "Fiesta Marketplace" entity, i.e. those developers who were the primary interests in changing the culture of the area.

These same property owners/developers have, and continue to have, extensive connections to the newly formed non-profit business group called Downtown, Inc. As of this writing, these developers presently serve as the officers and directors of Downtown Inc., the entity the City of Santa Ana chose to manage the proceeds from the special assessment.

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<sup>1</sup> Orange County Register, Dec. 23, 2007

<sup>2</sup> Ibid

## SANTA ANA'S PROPERTY BASED IMPROVEMENT DISTRICT

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Also, in 2008, the City of Santa Ana began efforts to establish a new "CID" or Community Improvement District for the same area.

### **FACTS:**

In 2007, the City of Santa Ana began to review various options on how to increase revenues available for improvements in that business district commonly referred to as "downtown."

In January of 2008, the city formed the Management District Formation Committee for the purpose of developing a Community Management District (CMD). The committee also began working with a consultant in an effort to define the specific area to be considered as part of any district and to develop the actual management plan.

From June through October of 2008, the petitioning process took place.

On July 7, 2008, the City of Santa Ana City Council added Article XX to Chapter 13 of the Municipal Code allowing for the establishment of CMDs. This ordinance differs significantly from state law in that the ordinance set "pre-formation petitioning" at 30% of the proposed district value while the state normally required 50%. Also, the life span of the CMD was set for 10 years while state law limits the life span to five years, with renewals of 10 year periods.

On August 5, 2008, Downtown Inc., the newly formed non-profit organization filed Articles of Incorporation with the Secretary of State with the intention of becoming that organization which would manage the proceeds from the new CMD. This non-profit organization had a board of directors that consisted of the very same developers who were pursuing the developmental changes for the downtown area.

On August 18, 2008, the Santa Ana City Council adopted Ordinance No. NS-2771..."An Ordinance of the City Council of the City of Santa Ana Adding Article XX to Chapter 13 of the Santa Ana Municipal Code Related to Establishment of Community Management Districts."

On August 29, 2008, the Santa Ana City Council adopted the CMD plan, and on October 6, 2008, declared its intention to go forward with the establishment of the CMD. On October 16, 2008, a notice of public hearing in this regard was issued, and a public hearing was set for December 1, 2008.

The voting process to establish "property based improvement districts" is based upon the assessed value of the properties and not on an individual or "one man-one vote" rule.

On December 1, 2008, the following voting tabulations were reported to the City Council. The tabulations were reported in two ways, i.e. one including the ballots from the Town Square Condominium project and one excluding the project:

## SANTA ANA'S PROPERTY BASED IMPROVEMENT DISTRICT

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### Including Town Square:

In support: (31) representing \$301,510 or 59.7% of total assessed value.

Opposed: (73) representing \$203,556 or 40.3% of total assessed value.

### Excluding Town Square:

In support (27) representing \$301,252 or 60.03% of total assessed value.

Opposed (42) representing \$200,558 or 39.97% of total assessed value.

A cursory review of this tabulation shows that a minority (27) of the "in support" votes controlled a majority of the total assessed value. This became a critical issue as the district became operational.

On December 15, 2008, the clerk of the City Council "certified" the voting results and certain items are of significant note.

Ballots mailed: 421

Ballots returned: 107

Ballots returned from Town Square Condominium Project: 35

Ballots returned (excluding Town Square): 69

### Total weighted assessment amounts of returned ballots:

All ballots: \$505,066

Excluding Town Square: \$501,810

These numbers are problematic in that only twenty-five percent (25%) of the ballots were returned. This would indicate the existence of administrative problems with the procedure, disinterest by the voters, a lack of understanding as to the ramifications of the voting, or a combination thereof.

However, based upon these results, the City Council moved forward with a resolution to establish the "Downtown Santa Ana CMD." On April 21, 2009, the Santa Ana City Council authorized the execution of an agreement with Downtown Inc., the non-profit corporation.

On May 4, 2009, the Council approved a resolution to modify the original plan to change the dates of implementation to reflect a new and different period from January 1, 2010, to December 31, 2014.

On May 18, 2009, a public hearing was conducted related to the proposed amendment to the original plan.

On September 17, 2009, approximately 10 months after the votes were certified by the City Clerk, Downtown, Inc. sent correspondence to the property owners announcing the results of the vote and the subsequent establishment of the CMD and in November of 2009, the first assessments were delivered to the property owners in the newly established CMD.

## SANTA ANA'S PROPERTY BASED IMPROVEMENT DISTRICT

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Many of the property owners claimed they were taken by surprise at the existence of the assessment much less the amounts. In many cases, their property taxes with the assessment doubled and in some cases tripled. Many assessments went unpaid and many properties were threatened with legal actions.

As more of the assessments became known, the protests from those most affected became more vocal and louder.

On August 1, 2011, a notice for a public hearing was issued indicating the city's intent to modify the boundaries for the downtown CMD. "Considerable dissention took place at this hearing alleging mismanagement issues associated with Downtown Inc., and the mayor pro tem directed staff to prepare a resolution for the "disestablishment of the PBID." A second city councilman indicated that any modifications to the original district area is considered a new district, and cites Proposition 218 in support of that position.

On August 24, 2011, a public hearing was held wherein numerous speakers addressed the city council. The majority of the speakers objected to the PBID indicating that proper procedures were not followed in its establishment, that the assessments being made did not provide a proportional benefit as required by applicable law, and requested that the PBID be "disestablished." Subsequent comments from city council members revealed a lack of consensus as to what actions if any could, or should, be taken. At least three (3) of the members of the city council agreed that certain changes had to take place, most notably in the manner in which Downtown Inc. was organized and conducting the business of administering the PBID. At this council meeting, the council agreed to allow an amendment to the boundary of the PBID.

On September 11, 2011, the city council again met to discuss the disestablishment of the PBID. Again, extensive discussions took place regarding the manner in which the PBID was established, whether it should continue, a lack of transparency by Downtown Inc., and mismanagement issues with Downtown Inc. The lack of consensus amongst the council continued and the matter was continued until October 3, 2011.

On October 3, 2011, a resolution was introduced before the city council to disestablish the PBID pursuant to Article XX, Chapter 13, of the Santa Ana municipal code. Multiple petitions had been received by the city calling for the disestablishment, "specifically, the City Clerk received fifty-six (56) signatures on petitions protesting against the existence of the CMD." The resolution also states that "there are questions regarding the overall support for the CMD from the remaining property owners during the vote if the City had not cast votes in support of the CMD." Comments at this meeting included statements that fifty-nine (59) signatures requesting disestablishment had been received, and that the proposed budget submitted by Downtown Inc. was "substandard." The matter was again continued until November 7, 2011.

On November 7, 2011, the Mayor Pro Tem asked the city council to "clean things up." She further stated that the council never approved the bylaws or the agreement, i.e. with Downtown Inc. Furthermore, she stated that "State Law has a Clause for Disestablishment that was deleted from the Resolution that approved the Santa Ana Ordinance." Three motions were made: (1) to set a public hearing for the disestablishment of the PBID; (2) to have an advisory election

## SANTA ANA'S PROPERTY BASED IMPROVEMENT DISTRICT

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without the city's vote; (3) to add a process for disestablishment. All three motions died for a lack of votes.

### ANALYSIS

Fiesta Marketplace Partners owns 145,000 square feet of retail and office buildings, with approximately 45 tenants in downtown Santa Ana. When first developed in the late 1980s, Fiesta Marketplace was specifically oriented to Hispanic shoppers. Most recently, the area has been renamed East End.

The 66-block special assessment district includes 312 property owners and approximately 800 businesses. Property owners have been ordered to pay assessment fees for extra security, marketing and promotional events in the immediate area. A considerable portion of these expenses are related to the "newer" businesses such as restaurants and nightclubs.

The developer in this matter has indicated publically that his relationship with the City of Santa Ana was, in many instances, "informal." He further indicated that this was possible because "city staff had a rough idea of whether the City Council would back their plans." "That's the kind of relationship I had with them. They said something, they did it. I said something, I did it." However, he also stated that after the allegations of "gentrification" were made, the "political atmosphere started to turn sour, and city staff became less confident in making agreements." "It was as if one day you could trust what staff was saying, then the next day they were scared and couldn't commit to anything."<sup>3</sup>

In regard to many of the smaller shopkeepers the developer stated: "They're in business because I'm propping them up. But I can't do that forever. Some of them are going to make it because they are going to change, and others are just going to keep doing things the way they've always done, and they will fail."<sup>4</sup> "In order for the retailer to adapt, they're going to have to figure out what to sell and how they're going to sell it," he said.

There is significant opposition to the PBID, the procedures used in its formation, and to how Downtown Inc. is managing the proceeds, from many area business owners. Many comments were made in local newspapers and neighborhood publications.

One shop keeper said some of the changes taking place are hurrying the trend of Spanish-speaking customers seeking other places to shop. "This plan should have, from the beginning, been inclusive and gotten all the merchants together so they're not forcing anyone out—but that didn't happen," he said.

The comments from that merchant reflected the attitude of many others. "What are we paying for? They don't do anything for us. They only care about nightlife and bringing in the wealthy, but those people aren't going to help my business." There have been additional allegations that the proceeds from the assessments from "struggling property owners" are being utilized for the

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<sup>3</sup> Voice of OC, July 22, 2011

<sup>4</sup> NY Times article October 30, 2011

## SANTA ANA'S PROPERTY BASED IMPROVEMENT DISTRICT

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benefit of certain individuals. That merchant also stated "So many people donated their time and money to helping the downtown and to see this infuriates me so much."

By August of 2011, the level of discord and combative rhetoric had reached a high level of intensity. By this time, the special assessments had taken place, the actual amounts of the moneys due were known, many had gone unpaid, and actions were being taken to collect those in arrears. This was taking place during a time of economic distress as well.

The primary influences promoting the changes to this consistently historical area were the developer on the one hand with resistance by the cultural traditionalists on the other, with the latter being forced to pay for the changes which they vigorously opposed. They were being assessed monies that were being used to change the identity of the very area that they had long cherished.

Allegations of racism inevitably became an integral part of the dispute and further escalated the loudness of the discussion and the intensity of the differences.

Many property owners complained that the special assessment district was illegal in its formation, and that the promoters of the special district deliberately eliminated the disestablishment procedure. The petitions to disestablish the assessment district were in an amount representing numbers considerably in excess of the minimum required and have been submitted to the City of Santa Ana.<sup>5</sup> It is also alleged that the City of Santa Ana voted its interest in the formation process in violation of the proper procedures established by law and that their vote constituted 38% of the votes needed to establish the district. The results have caused, on average, a doubling of the financial burdens on the respective properties.

Additionally, these property owners point out that the majority of the proceeds of the assessment are being utilized in a manner that benefits a particular clientele, those related to the business interests of the developers with little or no benefit to the majority of the property owners. They believe that they are paying a significant surcharge on their properties that they cannot afford, for services that are of no benefit to them or their businesses, with the result that they will be driven out of business, and have become disenfranchised and disillusioned.

And, although numerous requests and proposals for relief were made to the Santa Ana City Council, continuing inaction by the city council has aggravated an already serious situation.

A significant number of issues have arisen related to the procedures required to establish a Community Improvement Districts. Many of these issues are directly related to the originating ordinance approved by the City Council while others are related to specific provisions of the California Government Code and the Constitution of the State of California:

*"Prior to levying a new or increased assessment, or an existing assessment that is subject to the procedures and approval process set forth in Section 4 of Article XIII D of the California Constitution, an agency shall give notice by mail to the record owner of each identified parcel. Each notice shall include the total amount of the proposed*

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<sup>5</sup> Streets and Highway Code Section 36670(a).

## SANTA ANA'S PROPERTY BASED IMPROVEMENT DISTRICT

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*assessment chargeable to the entire district, the amount chargeable to the record owner's parcel, the duration of the payments, the reason for the assessment and the basis upon which the amount of the proposed assessment was calculated, and the date, time, and location of a public hearing on the proposed assessment. Each notice shall also include, in a conspicuous place thereon, a summary of the procedures for the completion, return, and tabulation of the assessment ballots required pursuant to subdivision (c), including a statement that the assessment shall not be imposed if the ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment, with ballots weighted according to the proportional financial obligation of the affected property.”<sup>6</sup>*

*At the conclusion of the public hearing conducted pursuant to subdivision (d) an impartial person designated by the agency who does not have a vested interest in the outcome of the proposed assessment (emphasis added) shall tabulate the assessment ballots submitted, and not withdrawn, in support of or opposition to the proposed assessment. For the purposes of this section, an impartial person includes, but is not limited to, the clerk of the agency. If the agency uses agency personnel for the ballot tabulation, or if the agency contracts with a vendor for the ballot tabulation and the vendor or its affiliates participated in the research, design, engineering, public education, or promotion of the assessment, the ballots shall be unsealed and tabulated in public view at the conclusion of the hearing so as to permit all interested persons to meaningfully monitor the accuracy of the tabulation process..”<sup>7</sup>*

Furthermore, in 1996, the voters of the State of California passed Proposition 218 (Cal. Const., art. XIII D). Considerable interpretation was given to this provision in 2008 by the courts:

*“Before Proposition 218 became law, special assessment laws were generally statutory, and the constitutional separation of powers doctrine served as a foundation for a more deferential standard of review by the courts. But after Proposition 218 passed, an assessment's validity, including the substantive requirements, is not a constitutional question. There is a clear limitation however, upon the power of the Legislature to regulate the exercise of a constitutional right. All such legislation must be subordinate to the constitutional provision, and in furtherance of its purpose, and must not in any particular attempt to narrow or embarrass it. Thus, a local agency acting in a legislative capacity has no authority to exercise its discretion in a way that violates constitutional provisions or undermines their effect.”<sup>8</sup>*

The court further states that:

*“Under the plain language of Proposition 218 (Cal. Const., art. XIII D), a special benefit must affect the assessed property in a way that is particular and distinct from its*

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<sup>6</sup> California Government Code section 53753(b)

<sup>7</sup> California Government Code section 53753 Subsection (e)(1):

<sup>6</sup> Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority. 44 Cal.4<sup>th</sup> 431.

<sup>7</sup> Ibid

<sup>8</sup> Ibid

## SANTA ANA'S PROPERTY BASED IMPROVEMENT DISTRICT

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*effect on other parcels and that real property in general and the public at large do not share.”<sup>9</sup>*

*A “tax” can be levied without reference to peculiar benefits to particular individuals or property. But, a special assessment, unlike a tax, must confer a special benefit upon the property assessed beyond that conferred generally. “An assessment can be imposed only for a “special benefit” conferred on a particular property”<sup>10</sup>. An assessment is “invalid” if it does not comply with the special benefit and proportionality requirement of Proposition 218, or if it fails to “directly connect any proportionate costs of and benefits received from the permanent public improvement.”<sup>11</sup>*

It has been alleged the tabulation of the ballots was not performed in a manner consistent with requirements of the Government Code. Because the City of Santa Ana placed its interest into the process by voting, it now had a vested interest in the outcome of the process, and thereafter used its own clerk’s office to conduct that tabulation, there is a lack of impartiality, or certainly the appearance of one.

The language of the applicable constitutional provisions is clear and unequivocal as to its intent as well as to when such assessments are to be allowed and the manner in which they are to be appropriated. As stated above: **“A special assessment must confer a special benefit upon the property assessed, beyond that conferred generally.”** (emphasis added)

Furthermore, in light of the history of this area over the past twenty-five (25) years, the way in which public money has been channeled to a select few, and with these select few continuing to exercise control over the proceeds produced by this assessment district, there exist strong reasons to suspect that appropriate procedures were not followed.

Most importantly, the actions taken by the developers, the confusion which took place in the voting process, the failure to comply with the legal requirements relating to special assessment districts, the difficulties associated with businesses in a period of economic limitations, and the lack of civility in the discussions, have resulted in tumultuous circumstances at best. These circumstances have become unmanageable and can only result in serious financial difficulties for all concerned. The developers will be in danger of having abandoned properties as the smaller business seek alternatives elsewhere, and those that cannot afford the change will be put out of business. The City of Santa Ana will continue to suffer the financial drawbacks associated with those conditions.

The City Council of Santa Ana has been placed on notice on numerous occasions as to their lack of compliance with the legal requirements well established in California law as related to the establishment, management, and continuance of special assessment districts. Its continuing disregard of the concerns of the majority of the citizens being impacted by these circumstances constitutes a disenfranchisement and disservice to its constituency. The time has long past for the city managers and the city council to step back, reflect on what has taken place and take

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<sup>11</sup> Ibid

## SANTA ANA'S PROPERTY BASED IMPROVEMENT DISTRICT

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corrective actions. Continuing to ignore this matter can only result in further discourse, both conversationally and legally, which will be detrimental to all.

### **FINDINGS:**

In accordance with California Penal Code §933 and §933.05, the 2011-2012 Orange County Grand Jury requires responses from each agency affected by the Findings/Conclusions presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its study of the Santa Ana Property Based Improvement District, the 2011-2012 Orange County Grand Jury makes the following Findings/Conclusions:

**F1.** City of Santa Ana appears to be in violation of California State Law in the formation of this Improvement District.

**F2.** Monies collected from the improvement district appear to have only benefited a few and have not resulted in a direct benefit to the assessed property as required by California law.

**F3.** An appearance of impropriety exists in the relationship between the developer and the City of Santa Ana.

**F4.** An appearance of impropriety exists in the relationship between the developer and Downtown Inc., the administrator of the funds from the special district.

**F5.** The process by which the district was established in regard to the mailing of ballots, the process of tabulation, and the voting by the City of Santa Ana does not appear to be in compliance with the statutory requirements for establishing an assessment on property owners.

### **RECOMMENDATIONS:**

In accordance with *California Penal Code* §933 and §933.05, the 2011-2012 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 study of the Santa Ana Property Based Improvement District, the 2011-2012 Orange County Grand Jury makes the following recommendations:

## SANTA ANA'S PROPERTY BASED IMPROVEMENT DISTRICT

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**R1.** The City of Santa Ana should request that its City Attorney or independent counsel conduct an investigation into whether the City of Santa Ana complied with the requirements of establishing a formation district; whether that district benefits all property owners proportionately; and whether there are any violations or conflicts of interest. If so, the City of Santa Ana should immediately take action to disestablish the district.

**R2.** The Santa Ana City Attorney and the Orange County District Attorney should investigate the alleged violations of election laws and procedures.

### **REQUIREMENTS AND INSTRUCTIONS:**

In accordance with *California Penal Code* Sections §933 and §933.05, the 2011-2012 Orange County Grand Jury requires responses from each agency affected by the **Findings/Conclusions** and **Recommendations presented** in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

*“Not later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section §914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations.*

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

## SANTA ANA'S PROPERTY BASED IMPROVEMENT DISTRICT

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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 warranted or is not reasonable, with an explanation therefore.

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

### Responses Required:

<b>Respondent</b>	<b>Findings</b>	<b>Recommendations</b>
City Council of Santa Ana Orange County District Atty.	F1, F2, F3, F4, F5	R1, R2 R2

THE ANAHEIM REGIONAL TRANSPORTATION INTERMODAL CENTER

**--ARTIC--**

**THE ANAHEIM REGIONAL TRANSPORTATION  
INTERMODAL CENTER**



**GRAND JURY 2011-2012**

**--ARTIC--**

**THE ANAHEIM REGIONAL TRANSPORTATION  
INTERMODAL CENTER**

**SUMMARY**

The development and construction of the Anaheim Regional Transportation Intermodal Center (ARTIC) will be a plus for the Orange County Area, and definitely an area that will see additional private investment in retail, restaurant and office space once constructed and up and running. The ridership and connectivity of buses, taxis and bicycles remain to be seen, but it is in the overall vision of the City of Anaheim. It should be noted that all funds are strictly for construction and that the City of Anaheim is responsible for the station operations once opened. Arguments for and against “**future planned high speed rail**” could be as far as 20 years off have been discussed and put aside. Yet the City of Anaheim moves ahead to construct this station with 2012 construction costs, not waiting 20 years to start.

**REASON FOR INFORMATION PAPER**

The Grand Jury’s responsibilities include examining allocations by Orange County Transportation Authority (OCTA) and making determinations as to whether taxpayers’ funds are spent in the best interests of the County’s citizens.

**METHODOLOGY**

THE 2011-2012 Orange County Grand Jury’s study of ARTIC included the following tasks:

- Conducted confidential interviews with knowledgeable parties, both for, against and neutral on the plans for ARTIC;
- Attended meetings of the Orange County Transit Authority’s Board of Directors;
- Reviewed minutes of the OCTA Board and the City of Anaheim’s council meetings;
- Reviewed Cooperative Agreements, resolutions, and financial reports of the OCTA and the City of Anaheim, and Resolutions passed by the agencies and financial reports of Anaheim and OCTA;
- Reviewed pertinent documents involved with the passage of Renewed Measure M and related projects; and
- Visited the web sites of the agencies, their publicists and news organizations.

## FACTS

### Measure M Transportation Investment Plan

In 1990 realizing that much-needed transportation improvements were not adequately funded by the state, Orange County citizens voted to tax themselves for transportation improvements. Measure M, effective in 1991, authorized a one-half of one percent (0.5%) sales tax to be collected and sent to the Orange County Transportation Agency (OCTA).<sup>1</sup> That raised the Orange County sales tax to 7.75%. It is distributed as follows:

- 6.25% to the state
- 1% to local jurisdictions<sup>2</sup>
- 0.5% to OCTA (Measure M)

After Measure M's passage, no Orange County driver could help but notice the ongoing construction and improvements on freeways, grade crossings, and surface streets. To date, revenues from the measure totaled \$5.5 billion, and OCTA earned a nationally recognized reputation for excellence.<sup>3</sup> Projects were considered to be well managed and completed on time and within budget. This 20-year span of the measure's success is today referred to as "M1".

### Renewed Measure M Transportation Investment Plan

In 2006 OCTA's Board of Directors, recognizing the need for long-term planning for major projects, placed "Renewed Measure M" on the ballot. Measure M (renewed) appeared on the November 7, 2006 Ballot stating:

*"Shall the ordinance continuing Measure M Orange County's half cent sales tax for transportation improvements, for an additional 30 years with limited bonding authority to fund the following projects?"*<sup>4</sup>

The ballot described the projects as relieving freeway congestion, fixing streets, synchronize signals, reduce pollution, and form a Tax Payer Oversight Committee. The Sample Ballot was sent out to registered voters prior to the November 2006 election. It contained little more information than the actual ballot and did not describing any actual projects.<sup>5</sup> M2 allocated expenditures into three primary categories: freeways, streets and roads, and public transit. During the life of M2, revenues are expected to be nearly twelve billion dollars. Bond issues secured by future revenues will be used to pay for construction projects. The ballot measure was approved by voters.

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<sup>1</sup> Measure M Orange County Transportation Improvement Plan

<sup>2</sup> La Habra's sales tax rate is 8.25%, with 1.5% going to the city.

<sup>3</sup> Department of Transportation, Certificate of Excellence

<sup>4</sup> General Election Ballot, County of Orange 7 November 2006

<sup>5</sup> County of Orange, General Election, Voter Information Pamphlet

Shortly after the election, the Orange County Transportation Authority put together and issued the Renewed Measure M Transportation Investment Plan. The plan was a 31 page public document detailing all the eligible projects A thru Z that are now part of the Renewed Measure M plan.<sup>6</sup> The City of Anaheim submitted its proposed project under the guidelines of Project T and R.<sup>7</sup> Project T was to “Convert Metrolink Stations to Regional Gateways that Connect Orange County to High Speed Rail Systems. Project R was for High Frequency Metrolink Service”.

### **ARTIC**

In conjunction with the Orange County Transportation Authority, the City of Anaheim went forward with the vision and design of a transportation hub, The Anaheim Regional Transportation Center Intermodal Center (ARTIC). This proposed hub would link rail lines, freeways, bus service, taxi service, and bike paths in one central location in Anaheim. The construction and operation of this site was to support all forms of transportation, enhance tourist accessibility to all tourist venues, and create business opportunities in Anaheim. The proposed structure was to be located near the Anaheim Stadium east of the 57 Freeway south of Katella Ave.

The proposed design is truly an iconic structure. The main structure is 120 feet tall and includes 56,000 square feet; with 23,000 square feet of retail and restaurant space (construction of the retail space is set aside for private investment and not in current plans). Original plans called for parking structures, but these are not in the current plan, just surface parking lots. The location on Katella Avenue is more accessible to cars and buses than the current Anaheim train station on Fourth Street that it will replace. The structure is to sit beside the existing Metrolink lines and include three parking lots and an access tunnel under the 57 Freeway to Angel Stadium.

The preconstruction activities of the project are underway with Request for Proposal being issued May 29, 2012. Bids are due July 12, 2012, and the construction contract is to be awarded August 23, 2012. Construction is to begin in late September 2012, with completion in September off 2014.

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<sup>6</sup> Orange County Transportation Authority, Renewed Measure M Transportation Investment Plan.

<sup>7</sup> OCTA, Renewed Measure M Investment Plan, pages 23 and 24.



### How did OCTA get there?

The Orange County Transportation Authority, in its role as the administrator of transportation related funding, has Ordinance 2 and Ordinance 3, that delineate in detail roles, responsibility and authority for administration of public funds. In January of 2011 at the OCTA Transit Committee Meeting<sup>8</sup>, the committee sent to the full Board for their February 11, 2011 meeting the following amendment to Measure M2 Project T Program Guideline Modifications;

*“...the changes consist primarily of adjustments to the Objectives section of the guidelines. The original statement made in this section indicated that the purpose of the program was to modify existing Metrolink stations to accommodate **future high speed rail service** (emphasis added). This is now revised to state the purpose to convert Metrolink stations to regional gateways that connect Orange County with **planned future high speed rail systems** (emphasis added).”*

Also recommended for adoption in this transmittal to the directors was an amendment to all other applicable sections of Project T especially in the eligibility and project participation section. Within this amendment “**relocation**” of a Metrolink station is said to meet the intent of “**convert**” in the original measure. With these approved amendments to guidelines, eligibility and project

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<sup>8</sup> OCTA Transit Committee Members are rotating Board of Directors.

participation, the City of Anaheim has been allocated funds from M2 and is proceeding with the Request for Proposal Process.

The Board of Directors on the advice of counsel **took the authority** to amend its ordinances to relocate the station and allocate the funds to this project in the City of Anaheim.<sup>9</sup>

OCTA has allocated \$100 million of M2 funds to the Anaheim Regional Transportation Center (ARTIC), bringing the total to \$184 million including expenditures from M1, the state of California and the federal government.

Current funding as of 2 May 2012 is as follows<sup>10</sup>

1. Measure M2/Project T&R (84.1 mil Proj. T)	99.2 million
2. Measure M Transit Revenue	43.9 million
3. 2008 State Transportation Improvement Program	29.2 million
4. Federal Sources (includes grants)	11.8 million
	Total 184.1 million

(Does not include the 3.6 million for environmental impact report)<sup>11</sup>

The current project meets all the guidelines set by OCTA and other sources.

### Findings/Conclusions

In accordance with *California Penal Code* Sections 933 and 933.05, the 2011-2012 Grand Jury requires responses from each agency affected by the **Findings/Conclusions** presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

**F1.** The Anaheim Regional Transportation Intermodal Center (ARTIC) appears to be adequately funded by federal and state grants and local Proposition M2 taxes, and when constructed, will be a state of the art intermodal transportation hub.

**F2.** The foresight of the OCTA Board of Directors was shown when they were able to change their stated guidelines for M2-T, Despite the fact that high speed rail maybe delayed for 20 years, they changed the criteria for expenditures from “for connect to existing structures” to “relocating” to another site, and from intending for “high speed rail” to “for planned high speed rail”, which allowed the project to continue.

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<sup>9</sup> OCTA, Board Committee Transmittal, dated February 2011

<sup>10</sup> Articinfo.com, Funding Sources, 10/28/11

<sup>11</sup> Articinfo.com, Funding Sources, 10/28/11

**Recommendations**

In accordance with *California Penal Code* Sections 933 and 933.05, the 2011-2012 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 research of the Anaheim Regional Transportation Intermodal Center the 2011-2012 Orange County Grand Jury puts forth the following **recommendations**:

**R1.** The OCTA Board of Directors should inform the public how the authority revised the wording that changed the guidelines of the voter approved Measure M2 – Project T.

**Responses**

“In accordance with *California Penal Code* Sections 933 and 933.05, the 2011-2012 Grand Jury requires responses from each agency affected by the **Findings** and **Recommendations** presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

*“ Not later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section §914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations...”*

Comments to the Presiding Judge of the Superior Court in compliance with the Penal code Section 933.05 are requested or required as shown below:

	<b>OCTA</b>		<b>OCTA</b>
<b>F1</b>	<b>X</b>	<b>R1</b>	<b>X</b>
<b>F2</b>	<b>X</b>		

ANTI-BULLYING PROGRAMS IN ORANGE COUNTY SCHOOLS

# ANTI-BULLYING PROGRAMS IN ORANGE COUNTY SCHOOLS



**GRAND JURY 2011-2012**

2011/2012 ORANGE COUNTY GRAND JURY

## **ANTI-BULLYING PROGRAMS IN ORANGE COUNTY SCHOOLS**

“...if we share a sense of community and the courage to seek justice, we can make our schools better places to learn and our community’s better places to live.” Raymond W. Rast, Ph.D—Assistant Professor, Department of History, CSUF

### **SUMMARY:**

The 2011-2012 Orange County Grand Jury has investigated bullying in Orange County schools. There has been an increased awareness in recent years (of the issue) of bullying. The Grand Jury believes bullying to be a serious issue. This study began with no formal definition of bullying. School children, display through behavior, an innate sense of injustice when typical bullying experiences are encountered. Some cry, some withdraw and others fight back appropriately or inappropriately. As the study developed it became clear that a uniform definition of bullying was needed throughout the school system. By defining bullying for statistical purposes, a baseline could be established from which to measure progress. New legislation contained in Assembly Bill 1156, Assembly Bill 746 and Assembly Bill 9 assists in clarifying the definition of bullying. The 2011-2012 Grand Jury is in agreement with the legal definitions of bullying. At the present time each school district is free to define bullying in its own terms. Thus, it is difficult to track trends in bullying in Orange County.

In examining Orange County elementary, intermediate and high schools, it was apparent that bullying was an issue that the schools were taking steps to address. Bullying incidents occur at all grade levels. Schools have implemented anti-bullying programs both commercially made and school site developed. How effective these programs are remains unclear. One reason is the lack of a definition of bullying to benchmark the results against. Data and observations from school visits conclude and recommend that schools should consider the following:

- Post anti-bullying school policy for students
- Establish a procedure for tracking bullying incidents and studying trends
- Utilize the expanded definition of bullying established in the new State legislation AB 1156, AB 9, AB 746
- Establish clear communication with students/staff regarding confidentiality in reporting bullying.

This report concludes with additional recommendations to all Orange County Schools and the Orange County Superintendent of Schools. New legislation effective July 1, 2012 will give additional direction to schools regarding the development and implementation of policies and procedures addressing bullying.

## **REASON FOR STUDY:**

All students have the right to attend campuses that are safe. One of our highest priorities is to protect Orange County students from violence and prevent it whenever possible.

Enacted Assembly Bill 537 (Sec. 1) states that educators observe how violence affects youth every day. Educators know firsthand that the learning process is materially impeded when a student is concerned about his or her safety. Every school district in Orange County has statutory responsibility for implementing its own programs as well as teacher/administration training to address this issue. It is important to benchmark the implementation of anti-bullying programs and training in schools. This study surveyed these programs and, received testimony regarding bullying incidents. In addition, the study looked at school anti-bullying policy and procedures.

The primary purposes of the study are:

- All District Superintendents were contacted regarding anti-bullying programs and administration/teacher training provided by Orange County schools.
- To understand the personal effects and ramifications of being a bully victim and the role of the school concerning bullying incidents.
- To recommend a standard definition of bullying be used by all schools in Orange County in order to facilitate the tracking of incidents of bullying at the county level.

## **METHODOLOGY:**

There are 27 individual school districts in Orange County. The 2011-2012 Grand Jury began its investigation by requesting from each of the district superintendents, information about anti-bullying/anti-harassment and teacher training programs they currently recommend to their schools. All superintendents responded they had anti-bullying programs in place for both administration/teachers and students. The next step was to examine district program involvement at elementary, intermediate and high school levels in Orange County.

Additionally, this study examined anti-bullying programs implemented in Orange County schools. This was researched by creating a more refined survey to interview school principals. The five Supervisorial District boundaries were used. From each of the five Supervisorial Districts, three schools with the largest student population were selected for study: one elementary, one intermediate and one high school. Each of these schools was selected from different school districts within each Supervisorial District. Fifteen schools and their principals were then visited and interviewed by the 2011-2012 Grand Jury.

The 2011-2012 Grand Jury was given the opportunity to interview parents of bullied victims. The interviews uncovered the victims' experiences and revealed how the school handled each

situation. These interviews were used as background information. In addition, one Orange County student explained to this Grand Jury their experience of being a bully victim. This is included in the report.

Interviewed Lee Hirsch, director of the documentary film, 'Bully.'

Examined the AERIES software program contracted by most Orange County school districts to, among other things, enter student incident reports into computer filed codes. Aeries incident reports may include bullying/harassment or other forms of behavioral issues. The California Healthy Kids Survey is given to many Orange County students grades 5, 7, 9, and 11 annually. The Module A section of this survey inquires of students, among other things, their bullying experiences.

Analyzed Assembly Bill 1156, Assembly Bill 746 and Assembly Bill 9, newly passed legislation addressing Bullying/Harassment.

### **Background/Facts**

#### **Posting of Anti-discrimination/ Anti-harassment Policy**

Education Code 234.1 states that antidiscrimination and antiharassment policies be posted in all schools and offices, including staff lounges and pupil government meeting areas. During the interview process, all five elementary, five intermediate and five high schools were asked if policies were posted. At no educational level (elementary, intermediate, high school) was the policy posted in all locations. The staff lounge and student handbook were cited as the most frequent locations.

#### **California Healthy Kids Survey:**

The California Healthy Kids Survey authorized by the California Department of Education is administered to students in most Orange County schools. The 2011-2012 Grand Jury was interested in intermediate and high school student responses to this survey's bullying questions. Therefore, the Module A section of the Healthy Kids Survey was analyzed.

When reviewing the Healthy Kids Survey, all Module A questions that referred to different bullying/harassment scenarios were analyzed. Results from most of these questions indicated 7<sup>th</sup> grade students demonstrated a higher level of involvement in these bullying scenarios.

Additional Module A questions indicated 9<sup>th</sup> grade students feel the least safe in their schools. This grade level experienced being threatened with a weapon more than any other grade level.

The appendix contains questions and a summary of responses contained in the California Healthy Kids Survey.

## **Definition of Bullying**

A commonly accepted definition of bullying is as follows: bullying is defined as aggressive behavior that is intentional, repeated over time and involves an imbalance of power or strength. Bullying can take many forms, such as hitting or punching, teasing or name-calling, intimidation through gestures, social exclusion and sending or posting insulting messages or pictures by cell phone or online (also known as cyber-bullying). This definition comes from the San Mateo County Times, USA Weekend Magazine, February 4-6, 2011, Pg. 6-7.

Professor Dan Olweus, an internationally renowned Norwegian researcher has provided common examples of school type bullying, which are seen at all grade levels. They include, but are not limited to, the following:

- Saying hurtful and unpleasant things
- Making fun of others
- Using mean and hurtful nicknames
- Completely overlooking someone
- Deliberately excluding someone from a group of friends
- Hitting, kicking, pulling hair, pushing etc.
- Telling lies
- Spreading false rumors
- Sending mean notes
- Trying to get other students to dislike another person

**The 2011-2012 Grand Jury found that the definition of “bullying” evolves over time, and no concise definition of bullying is readily available in one document.** The legal definition is found in various codes, sections, as well as in legislative bills. Three new bills have recently been signed into law that imposes new requirements on schools in preventing and responding to bullying and cyber bullying incidents. These three bills will redefine “bullying,” require districts to implement new policies, and revise their current policies concerning bullying, complaint procedures and student discipline. This will help standardize the meaning of bullying and make it easier to identify and track bullying incidents in the future. The 2011-2012 Grand Jury suggests that all school districts agree on one definition of bullying in the school setting. This will assist school communities in recognizing, understanding, defining, and responding to bullying behaviors.

- Assembly Bill 1156 (AB 1156) effective July 1, 2012 broadens the definition of “bullying” to mean any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act, and including one or more acts committed by a pupil or group of pupils. This bill also provides pupils who are

victims of bullying to be given priority for interdistrict attendance at the request of the person having legal custody of the pupil. AB 1156 encourages districts to include bullying policies and procedures in their comprehensive school safety plan and provide training to school personnel to recognize bullying.

- Assembly Bill 9 (AB 9) effective July 1, 2012 (Seth’s Law) will require school districts to adopt a policy that prohibits discrimination, harassment, intimidation and bullying, be responsive to complaints about bullying, train personnel how to recognize and intervene in bullying and make resources available to victims of bullying. The policy that is adopted must be posted in all schools and offices, including staff lounges and pupil government meeting rooms.
- Assembly Bill 746 (AB746) effective January 1, 2012, amends the definition of “cyberbullying” although it will be subsumed by AB 1156 as of July 1, 2012. This bill defines an “electronic act” as “transmission of a communication, including but not necessarily limited to, a message, text, sound, or image, or a post on a social network internet web site by means of an electronic device, including but not necessarily limited to, a telephone, wireless telephone or other wireless communication device, computer, or pager.” This bill is an update of earlier legislation.

### **Standardized Information Systems**

In order to standardize the accumulation of data throughout the schools in Orange County a standardized information system is needed. Aeries is a computer software program that offers a “Student Information System” to schools and school districts that addresses this need.

The Aeries system is presently used by most Orange County schools and school districts. Unfortunately, this system has ninety-two (92) codes listed under “Assertive Discipline.” Instances of bullying are typically filed under “Assertive Discipline.” Due to the flexibility and wide range of available codes, schools and districts can vary greatly in which codes they use to record bullying instances. This results in a lack of uniformity in recording bullying incidents and prevents meaningful statistics from being compiled.

By limiting the number of codes to be used and agreement by all schools to utilize the same system to track bullying, a more comprehensive analysis will be possible. Trends will become apparent over time. Because of this knowledge, programs that are more effective can be developed to remediate bullying and harassment.

In 2007, the National Center for School Engagement conducted a study that was funded by the Office of Juvenile Justice and Delinquency Prevention (OJJDP). Researchers found “bullying in a box” curriculums that are pre-fabricated and generic to be ineffective compared to effective intentional, student focused engagement strategies. In the future standardized data might shed a light on the most effective approach to address anti-bullying programs for Orange County students.

## **A Case Study in Bullying**

While investigating the issue of bullying the 2011-2012 Orange County Grand Jury interviewed parents of bullied victims. In one case, they interviewed both the parent and the child. The following case study is included in this report to illustrate the serious consequences bullying has on the victim.

**The following is a true story. It reflects the importance of maintaining confidentiality when investigating violations of school policy. The story illustrates the consequences of an inadvertent breach of confidentiality. Identifying data including names, gender, age, and grade level, have been changed to protect the identity of the students.**

This incident takes place in an Orange County intermediate school and begins with “Rita” an older friend of “Laurie’s.” Laurie noticed that Rita had brought a prohibited item to school, and was attempting to show other students. Although Laurie was alarmed, she was hesitant to report this incident because, among other things, Rita was a very popular student.

After discussing this with her parents, Laurie decided to report this incident to the school principal who asked her to complete a statement form. Laurie was hesitant and expressed her concern that the school maintains her confidentiality. However, within one week of the incident report, Laurie began to notice students at her school pointing fingers at her, talking behind her back, and accusing her of “ratting” on Rita. Although she denied it, the accusations continued. Unfortunately, because her name was not redacted from the incident report, other students were able to identify her. The bullying incidents at school increased in number and soon expanded into cyber bullying.

Ultimately, this resulted in Laurie’s parents placing her in a private school at considerable expense to the family. Laurie, along with her family, experienced great emotional stress. She lost her peer group at a sensitive time in her development. Fortunately, for Laurie she came from a nurturing and supportive family and did not feel isolated and alone. Less fortunate students who face harassment and bullying have been known to consider suicide.

The school must exercise great caution that confidentiality be maintained. Unfortunately in Laurie’s case a serious breakdown in the system occurred. Laurie was a strong academic student and able to maintain her grades. However, in many cases of bullying and harassment, the student is no longer able to concentrate on their studies, and they drop out of school or turn to other escape avenues. Bullying/harassment are serious behaviors that often results in long-term suffering and damage to the victim.

## **Interview with Lee Hirsch who directed the documentary entitled ‘Bully’**

Lee Hirsch’s film, “Bully,” is a portrait of the way children interact and how some teachers react when bullying incidents occur. When asked what his advice would be to best address schools that still struggle with bullying incidents, Hirsch responded, “Dealing with bullying needs to be a

school by school project. Programs are great, but they do not by themselves create a better school climate. Programs aside, there needs to be good leadership...parent to school to child. Ultimately, principals and vice principals set the climate on school campuses. Long term, we need social and emotional learning throughout Kindergarten through 12<sup>th</sup> grade rather than one exceptional assembly given at school.”<sup>1</sup>

Hirsch himself was a victim of bullying. Hirsch believes the problem has become worse with the rise of social media. After hearing about several cases of bullied kids that reached a breaking point, Hirsch decided to make the documentary. Acknowledging the movie is a starting point, Hirsch feels the film, sends messages to young people to stand up to bullies.

Members of the Orange County Grand Jury were given the opportunity to view a special showing of “Bully.” The documentary presented several examples of students being victims of bullying. The movie confirms that bullying is a problem that is ongoing and prevalent which needs to be addressed.

## **Conclusions**

This Grand Jury found evidence that all school districts are aware of bullying and taking steps to address the issue. By focusing on communication and coordination among the districts, positive steps can be taken to increase effectiveness in addressing bullying. The Aeries System or any standardized reporting system that bring uniformity to the recording of bullying incidents will aid Orange County in determining the scope of the problem. The code mandates that the school districts review their bullying procedures in light of the new legislation contained in AB1156, AB746 and AB9 and establish a common definition of bullying to be used by all districts. Consistency of data will be increased through standardization of definitions. Data leads to the recognition of trends that highlight areas of need. Limited resources can be focused on the most needed areas in addressing the problem of bullying.

## **FINDINGS/Conclusions**

In accordance with California Penal Code 933 and 933.05 the 2011-2012 Orange County Grand Jury requires responses from each agency affected by the Findings/Conclusions presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its study of bullying in Orange County, the 2011-2012 Orange County Grand Jury makes the following Findings/Conclusions:

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<sup>1</sup> Interview of film director Lee Hirsch, March 8, 2012

F1. Not all Orange County schools use the same technology, procedures and codes to record bullying or harassment incidents.

F2. New legislation AB1156 takes effect July 1, 2012, and broadens the definition of “Bullying.

F3. Education Code 234.1 requiring posting of anti-bullying/anti-harassment policies in prescribed areas was not evident in all schools visited.

F4. Based on witness testimony, confidentiality was not maintained in a bullying incident as prescribed in California Education Code section 234.1.

## RECOMMENDATIONS:

In accordance with California Penal Code Sections 933 and 933.05, the 2011-2012 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 bullying in Orange County, the 2011-2012 Orange County Grand Jury makes the following recommendations:

R1. Recommend a county wide compatible information system for reporting incidents of bullying be explored by all school districts.

R2. Recommend all countywide schools agree upon the same definition of bullying.

R3. Each district review standardized procedures to protect a bully victim and bystanders’ confidentiality as stated in Education Code 234.1

R4. By January 2013, Orange County Superintendent of Schools creates an oversight committee to monitor the mandates and implementation contained in Assembly Bills, AB1156, AB9, and AB746.

R5. Recommend Orange County Superintendent of Schools create a committee for the purpose of standardizing a definition of bullying to be used by all schools county wide when recording a bullying incident.

R6. Recommend each district explore the development of a county wide standard information system for recording incidents of bullying.

R7. All schools post anti-bullying/anti-harassment policy in offices, staff lounges and student government meeting areas as prescribed in Education Code 234.1.

## REQUIREMENTS AND INSTRUCTIONS:

In accordance with California Penal Code Sections 933 and 933.05, the 2011-2012 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.

The California Penal Code Section 933(c) 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 re commendations 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 Sections 933.05(a), (b), (c), details, as follows, the manners in which such comment(s) are to be made:

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

(1) The respondent agrees with the finding

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

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

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

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

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

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

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

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

<u>Responding Agency</u>	<u>Findings</u>	<u>Recommendations</u>
Orange County School Districts	F1, F2, F3, F4,	R1, R2, R3, R6, R7
Orange County Superintendent of Schools		R4, R5,

## **Appendix: A** **School Programs:**

The 2011-2012 Grand Jury completed interviews at elementary, middle and high school level with administration officials. From those interviews, it became apparent that various programs/clubs are in place to help students deal with bullying situations and to support student growth in problem solving behavior issues. The following are brief summaries of programs that were brought to the attention of this Grand Jury. This is a sampling of programs and not a complete list.

### **Rachel’s Challenge: “Start a Chain Reaction” In memory of Rachel Scott—a victim of the Columbine High School Shootings**

Rachel’s Challenge is a program that is designed to inspire, equip and empower students K-12 to make a positive difference in their world. A powerful partnership can replace bullying and violent behavior on a school campus with kindness and compassion so students can learn in a safer, more respectful environment. Rachel’s Challenge objectives for schools are:

- Create a safe learning environment for all students by re-establishing civility and delivering proactive antidotes to school violence and bullying.
- Improve academic achievement by engaging students’ hearts, heads and hands in the learning process.
- Provide students with social/emotional education that is both colorblind and culturally relevant.
- Train adults to inspire, equip and empower students to affect permanent positive change.

### **Cyber Saavy Safety Week:**

High school students participate in a school-wide program to encourage safe use of the internet. Each grade level takes part in a specific lesson facilitated by their teacher. Lessons included in the program are as follows:

- 9<sup>th</sup> grade—Social Networks and Cyber Bullying
- 10<sup>th</sup> grade—Social Networks and On line Predators
- 11<sup>th</sup> grade—Passwords and Phishing
- 12<sup>th</sup> grade—Digital Footprint and Online Reputation

### **Too Good For Violence/Drugs:**

“Too Good For Drugs/Violence” is a supplemental curriculum taught to 4<sup>th</sup>-8<sup>th</sup> graders. The program consists of 10 lessons teaching strategies for dealing with peer pressure and how to make good decisions. The four focus strands are: (1) conflict resolution, (2) anger management, (3) respect for self and others and (4) effective communication. Parents are invited to participate in completing lessons at home.

### **Web Days-Welcome Everybody:**

WEB “Welcome Every Body” is a middle school program designed to help incoming students succeed socially and academically as they transition from elementary school. Setting foot for the first time in a middle school can be intimidating. WEB is built on the belief that students can help students succeed. WEB leaders are positive role models motivating leading and teaching incoming students about the school. Activities include orientation, picnics, scavenger hunts, movie afternoons and WEB focus days.

### **Pal-Peer Assistance Leadership:**

The PAL “Peer Assistance Leadership Program” is a school-based peer-to-peer youth development program for students in grades 4-12 built upon a philosophy of students helping students. Established in 1980 by the Orange County Department of Education, the PAL program addresses the underlying causes of violence, tobacco, alcohol and drug use by youth. The program encourages PAL students and their peers to make healthy life decisions and provides opportunities to create a supportive and safe school environment. PAL supports students healthy lifestyles by building resiliency and assets through youth leadership, mentoring, conflict resolution, cross-age teaching, peer helping, service learning and prevention activities. The PAL program can enhance and support all student leadership programs in schools.

### **PBIS—Positive Behavior Intervention and Support:**

This nationwide program is widely used. PBIS is a system change method that promotes positive student behaviors through strategies incorporated into the classroom. This is a four year training program that works with teachers to increase their behavioral skills to change teacher behavior in order to change student behavior. PBIS is designed to positively affect not only the student behavior but student quality of life.

### **BRIDGES—Building Bridges To Understanding:**

The BRIDGES program has partnered with Orange County schools that have demonstrated a commitment to this mission and to creating a campus that is safe, welcoming and equitable. BRIDGES is a multi-year program designed to improve inter-group relations by partnering with

schools and communities to create, advocate and sustain a safe, inclusive climate that respects society's diversity. BRIDGES trains teams of people to help create a safe environment free of anti-harassment/bullying.

**Gay-Straight Alliance:**

Gay-straight alliances are student organizations found in high schools that are intended to provide a safe and supportive environment for lesbian, gay, bisexual and transgender youth and their straight allies. The goal of gay-straight alliances is to make their school community safe and welcoming to all students regardless of sexual orientation or gender identity. They participate in national campaigns to raise awareness such as the Day of Silence, National Coming out Day, and No Name Calling Week.

**Appendix: B**

**Sample of Survey Questions used during interviews with site administrators entitled, 'Anti-Bullying/Anti-Harassment Survey' are as follows:**

1. May we see/have redacted bullying/harassment incident reports for 2010-2012 and so far this year?
2. How many bullying or harassment incidents were reported and recorded in your incident reports for school year 2010-2011?
3. How many so far for the current school year?
4. What anti-bullying/anti-harassment student programs and clubs have been made available to your school this year and last?
5. Are you familiar with the programs GLISEN, BRIDGES, and PBIS? If so, please explain your understanding or knowledge of these programs and their implementation, if any, at your school.
6. Does your district or your school decide what anti-bullying/anti-harassment student programs will be offered?
7. Who decides on the implementation of these programs?
8. What is the frequency of the programs?
9. For how many years has your school been offering these programs?
10. Are your students surveyed following these programs? If so, how is this done?
11. How are the results of these surveys used and who reviews them?
12. What training programs have been presented to the administration and teachers each school year?
13. Does your district or your school decide which training programs are recommended for use?
14. Who decides the actual implementation of these training programs?
15. Are teacher training programs assessed or evaluated for appropriateness and effectiveness, and if so, by whom and how are the results used?
16. Did bullying or harassment incidents reports increase or decrease after programs were presented to the students?
17. Have anti-bullying/anti-harassment incident reports increased or decreased after training programs were completed by the administration and teachers?
18. What is your school/district's protocol for student/teacher incident report entries?
19. How does your school and/or district determine if a bullying/harassment incident will be included in the formal incident reports?

20. What additional efforts have the administration and/or teachers implemented on campus or in classrooms to help create an anti-bullying/anti-harassment atmosphere?
21. If your district suggests the use of anti-bullying/anti-harassment programs how, if at all, are the schools tracked or monitored for program implementation?
22. Please indicate the person, and/or committee, and/or department that would monitor program implementation.
23. Mandatory Postings (AB354, Ed Code 234.1 (D) Do you have any anti-bullying/anti-harassment policies posted and where are they? (Office, staff lounge, student gov't room, etc.)
24. Please provide copies of any materials available for students and staff regarding anti-bullying programs.

## **Appendix: C**

**Following is a list of O.C. districts surveyed by mail requesting all anti-bullying/anti-harassment programs/clubs recommended to schools in the district.**

1. Anaheim School District
2. Anaheim Union High School District
3. Brea Olinda Unified School District
4. Buena Park School District
5. Capistrano Unified School District
6. Centralia School District
7. Cypress School District
8. Fountain Valley School District
9. Fullerton Joint Union High School District
10. Fullerton School District
11. Garden Grove Unified School District
12. Huntington Beach City School District
13. Huntington Beach Union High School District
14. Irvine Unified School District
15. La Habra City School District
16. Los Alamitos Unified School District
17. Lowell Joint School District
18. Magnolia School District
19. Newport-Mesa Unified School District

20. Ocean View School District
21. Orange Unified School District
22. Placentia-Yorba Linda Unified School District
23. Saddleback Valley Unified School District
24. Santa Ana Unified School District
25. Savanna School District
26. Tustin Unified School District
27. Westminster School District

## **Appendix: D**

**California Healthy Kids Surveys were obtained from the following schools and in some cases their web sites.**

1. Agnes Smith Elementary
2. Horace Mann Elementary
3. La Veta Elementary
4. Peters Elementary
5. Buena Park Jr. High
6. McAuliffe Middle School
7. Pioneer Middle School
8. Thurston Middle School
9. Willis Warner Middle School
10. Trabucco Hills High School
11. Troy High School
12. Valencia High School

**Appendix: E**

**California Healthy Kids Survey Results**

Specific questions taken from the California Healthy Kids survey are as follows:

7 <sup>th</sup>	9 & 11 <sup>th</sup>	Question:	Results		
A14	A15	I feel safe in my school	(Results: 7 <sup>th</sup> graders felt the safest. 73%)	9 <sup>th</sup> graders felt the least safe 65.50%	11 <sup>th</sup> graders) 70.50%
A82	A100	Been pushed, shoved, slapped, hit or kicked	(Results: 7 <sup>th</sup> graders experienced this the most 42.50%)	11 <sup>th</sup> grade the least 19.25 %	9 <sup>th</sup> grade) 29.25%
A83	A101	Been afraid of being beaten up	(Results: 7 <sup>th</sup> graders were most afraid 22.20 %)	11 <sup>th</sup> grade the least 11.50%	9 <sup>th</sup> grade 15.50%
A84	A102	Been in a physical fight	(Results: 7 <sup>th</sup> graders were most often 22.00%)	11 <sup>th</sup> grade the least 12.75%	9 <sup>th</sup> grade 18.50%
A85	A103	Had mean rumors or lies spread about you	(Results: 7 <sup>th</sup> graders experienced the most 48.40%)	11 <sup>th</sup> grade the least 33.50%	9 <sup>th</sup> grade 35.75%
A86	A104	Had sexual jokes, comments, or gestures made to you	(Results: 7 <sup>th</sup> and 9 <sup>th</sup> were virtually the same 44.40%)	11 <sup>th</sup> graders experienced the least but only by 3% points 41.50%)	
A87	A105	Been made fun of because of looks or the way you talk.	(Results: 7 <sup>th</sup> graders experienced the most 41.75%)	11 <sup>th</sup> graders the least) 29.25%	9 <sup>th</sup> grade 35%
A93	A111	Been threatened with a weapon	(Results: Although the numbers are relatively small and close together, the 9 <sup>th</sup> graders experienced this the most—8.50% The 11 <sup>th</sup> graders the least –5.00% The 7 <sup>th</sup> graders were at 7.20%)		
A 95	A113	Your race, ethnicity, or national origin	(Results: 7 <sup>th</sup> graders experienced this the most 17.80%)	11 <sup>th</sup> grader the least 12.50%	9 <sup>th</sup> grade) 16.00%
A96	A114	Your religion	(Results: 7 <sup>th</sup> graders experienced this the most 12.00%)	11 <sup>th</sup> graders the least 8.25%	9 <sup>th</sup> grade 9.00%
A97	A115	Your gender (being male or female)	(Results: 7 <sup>th</sup> graders experienced this the most 8.00%)	11 <sup>th</sup> graders the least 5.75%	9 <sup>th</sup> grade) 7.00%
A98	A116	Because you are gay or lesbian or someone thinks you are	(Results: 7 <sup>th</sup> grade the most 12/00%)	11 <sup>th</sup> graders the least 6.75%	9 <sup>th</sup> grade) 8.25%
A99	A117	A physical or mental disability	(Results: The most—7 <sup>th</sup> and 9 <sup>th</sup> grades—virtually the same 5.55% The least grade 11 <sup>th</sup> 4.00%)		
A10 1	A119	How safe do you feel when you are at school?	(Results: 7 <sup>th</sup> graders Safe or very safe 73.30%)	9 <sup>th</sup> graders 69.25%	11 <sup>th</sup> graders) 74.50%
			Unsafe or very unsafe 5.90%	5.75%	4.00%
A10 3	A120	How many times did other students spread mean rumors or lies about you on the internet (Facebook, My Space, e-mail?)	(Results:-- 7 <sup>th</sup> grade –the least 20.00%)	9 <sup>th</sup> grade—the most 22.50%	11 <sup>th</sup> grade) 21.00%

## **Appendix: F**

### **California Education Code Section 234.1**

The following has been paraphrased and is not intended to be a complete analysis of California Education Code Section 234.1.

Local educational agencies, are responsible for the following: (a) Adopting a policy that prohibits discrimination, harassment, intimidation, and bullying based on the actual or perceived characteristics set forth in Section 422.5 of the Penal Code and Section 220, and disability, gender, gender identification, gender expression, nationality, race or ethnicity, religion, sexual orientation, or association with a person, or group with one or more of these perceived characteristics. The policy shall include a statement that the policy applies to all acts related to school activity or school attendance occurring within a school under the jurisdiction of the superintendent of the school district. (b) Adopt a process for receiving and investigating complaints of discrimination, harassment, intimidation, and bullying based on any of the actual or perceived characteristics set forth in Section 422.55 of the Penal Code and Section 220, and disability, gender identification, gender expression, nationality, race or ethnicity, religion, sexual orientation, or association or a person or group with one or more of these perceived characteristics. The complaint process shall include, but not limited to, all of the following:

(1) A requirement that, if school personnel witness an act of discrimination, harassment, intimidation, or bullying, he or she shall take immediate steps to intervene when safe to do so.

(2) A timeline to investigate and resolve complaints of discrimination, harassment, intimidation, or bullying that shall be followed by all schools under the jurisdiction of the school district.

(3) An appeal process afforded to the complainant should he or she disagree with the resolution of a complaint filed pursuant to this section.

(4) All forms developed pursuant to this process shall be translated pursuant to Section 48985.

(c) Publicized antidiscrimination, antiharassment, anti-intimidation, and antibullying policies adopted pursuant to subdivision (a), including information about the manner in which to file a complaint, to pupils, parents, employees, agents of the governing board, and the public. The information shall be translated pursuant to Section 48985.

(d) Posted the policy established pursuant to subdivision (a) in all schools and offices, including staff lounges and pupil government meeting rooms.

(e) Maintain documentation of complaints and their resolution for a minimum of one review cycle.

(f) Ensured that complainants are protected from retaliation and that the identity of a complainant alleging discrimination, harassment, intimidation, or bullying remains confidential, as appropriate.

(g) Identified a responsible local educational agency officer for ensuring school district or county office of education compliance with the requirements of Chapter 5.3 (commencing with Section 4900) of Division 1 of Title 5 of the California Code of Regulations and Chapter 2 (commencing with Section 200) .

AB 109: PUBLIC SAFETY REALIGNMENT

**AB 109: Public Safety Realignment:  
A Paradigm Change**



**GRAND JURY 2011-2012**

2011/2012 ORANGE COUNTY GRAND JURY

## **AB 109: Public Safety Realignment: A Paradigm Change**

### **SUMMARY**

As part of the 2011-2012 budget package, the California State Legislature made a number of changes to realign certain state program responsibilities and revenues to local government agencies (primarily counties). Three of these bills resulted in significant changes in the counties' criminal justice systems. The primary bill affecting the Orange County criminal justice system is AB 109, establishing the law requiring prison realignment.

As part of the prison realignment changes, the Legislature shifted the responsibility for lower-level offenders, parole violators and parolees from the state to the counties. Under the realignment plan, effective October 1, 2011, the offenders who previously would have been sentenced to state prison are now to serve their sentences in a county jail and/or under local community supervision by the Probation Department.

Additionally, certain offenders released from prison are now supervised in the community by county probation officers instead of by state parole agents. When these offenders violate the terms and conditions of their supervision, the courts, rather than the Board of Parole Hearings, will preside over revocation hearings to determine if they should be revoked, and sent to county jail, or continued under what is termed, "Post-release Community Supervision." (PCS).

These changes in California's criminal justice system are significant and indeed represent a paradigm change.

### **PURPOSE OF STUDY**

The state has provided estimates as to the number of cases expected to be referred to the Probation Department for Post-release Community Supervision and to the Sheriff's Department as new qualifying felony convictions. State funds to implement the program have been allocated to those agencies for implementation of the provisions of AB 109: The Public Safety Realignment Act. This study is to determine the accuracy of the estimates and sufficiency of the funding plan based on those estimates.

### **METHODOLOGY**

The Orange County Public Safety Realignment and Post-release Community Supervision 2011 Implementation Plan, approved by the Board of Supervisors on October 18, 2011, was used for determining the baseline information regarding the following:

- The expected number of cases to be released from state prison to the Probation Department under PCS; and

- The expected number of eligible felony cases to be sentenced to county jail in lieu of commitment to state prison.

These estimates were based on projections made by the State Department of Corrections and Rehabilitation. Data was requested from the Sheriff's Department, Probation Department, District Attorney and Public Defender as to the workload and budget impacts resulting from AB 109 during the first six months of operation.

## **BACKGROUND AND FACTS**

### **The Public Safety Realignment Law**

As part of the 2011-2012 budget package, the California State Legislature made a number of changes to realign certain state program responsibilities and revenues to local government agencies (primarily counties). All told, there were 23 pieces of legislation passed as part of the state's spending plan. Three of these bills resulted in significant changes in the counties' criminal justice systems. The primary bills affecting the Orange County criminal justice system are AB 109 establishing the law requiring realignment and AB 117 delaying the starting date until October 1, 2011 and establishing certain timelines for local jurisdictions.

As part of the realignment changes, the Legislature shifted the responsibility for lower-level offenders, parole violators and parolees from the state to the counties effective October 1, 2011. Under the realignment plan, the offenders who previously would have been sentenced to state prison are now to serve their sentences in a county jail and/or under local community supervision. Additionally, certain offenders released from prison are now supervised in the community by county probation officers instead of by state parole agents. When these offenders violate the terms and conditions of their supervision, the courts, rather than the Board of Parole Hearings, will preside over revocation hearings to determine if they should be revoked and sent to county jail or continued under community supervision. The state expects to reduce the prison inmate population by about 14,000 in 2011-2012 and approximately 40,000 upon full implementation in 2014-2015. The state estimates that these reductions will result in a state savings of about \$453 million in 2011-2012 and up to \$1.5 billion upon full implementation.<sup>1</sup>

Felons eligible for local level custody and/or community supervision are those convicted of offenses considered "non-violent, non-serious and non-sex offender." These are euphemistically referred to as "three-nons." Currently there are two distinct populations. The first consists of state prison inmates qualifying as "three-nons" that are due for release on parole. Instead of reporting to a state parole agent and having violations handled by a parole board, they are instructed to report to a county probation officer and all violations will be handled by local courts. Felonies ineligible for "three-non" status are defined by section 667.5(C) of the Penal Code for non-violent offenses, section 1192.7(c) of the Penal Code for non-serious offenses and

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<sup>1</sup> Mac Taylor, California Legislative Analyst Office, August 2011

in the case of sex offenders, by the California Department of Corrections and Rehabilitation (CDCR). In addition to those ineligible by statute, there are over 60 felonies that would otherwise fall into the “three-non” category that are specifically excluded from Post-Release Community Supervision (PRCS). These offenders will continue to receive state prison commitments.

The second population consists of newly sentenced defendants that formerly would have been sent to state prison. If they qualify as “three-nons,” they will now be sentenced to county jail and/or post release community supervision. AB 109/AB 117 did not result in the early release of any sentenced felons.

In addition to having all of the existing tools available, Sheriffs may use new alternative custody options for electronic monitoring and home detention under PC 1203.018 and contract with other counties or public community correctional facilities. There is also a provision for counties to contract back with the state for housing inmates.<sup>2</sup>

### **Local Organization and Oversight**

In Orange County, the Public Safety Realignment and Post-release Community Supervision Plan was placed under the oversight of the Orange County Community Corrections Partnership (OCCCP) Executive Committee consisting of the following members:

- Chief Probation Officer (Chair)
- Sheriff
- District Attorney
- Public Defender
- Assistant Presiding Judge
- Health Care Agency
- Chief, Garden Grove Police Department

Chaired by the Chief Probation Officer, the OCCCP will oversee the AB 109 realignment process and provide regular reports to the Orange County Board of Supervisors regarding funding and programming for various components of the plan.

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<sup>2</sup> **2011 Public Safety Realignment**, California State Association of Counties, California State Sheriff’s Association and Chief Probation Officers of California

## **Funding**

Based on a formula calculated by the state, Orange County was projected to receive state funds for \$25,734,096 for fiscal year 2011-2012 to provide services to an estimated 3,434 additional offenders.<sup>3</sup> Following is a breakdown of the projected state funding:

- \$ 23,078,393 for Post-release Community Supervision
- \$ 200,000 for a one-time planning grant
- \$ 1,628,450 for one-time training and implementation funds
- \$ 827,253 for District Attorney/Public Defender PCS representation
- \$ 25,734,096 total

The OCCCP initial funding recommendation is:

- \$ 13,616,251 Orange County Sheriff's Department
- \$ 6,692,733 Orange County Probation Department
- \$ 2,077,055 Orange County Health Care Agency
- \$ 692,354 Orange County Municipal Law Enforcement
- \$ 23,078,393 total

Following are estimates by the various departments as to the expected numbers of additional inmates or clients and proposed strategies to meet the increase in workload.

## **Sheriff's Department**

### **Expected Increase in Number of Inmates**

Based on data provided by the California Department of Corrections and Rehabilitation, the Sheriff's Department has estimated an average increase of 143 inmates per month. This number is based on several factors:

- Those convicted of an eligible felony;
- The additional number of pre-trial inmates;
- Violators of post release community supervision;
- Violators of state parole (up to 180 days) in custody; and
- Post release community supervision cases sanctioned with flash incarceration up to 10 days for each violation.

The new "three-nons" group of inmates is expected to serve longer sentences than the previous population limited mostly to those sentenced for misdemeanor crimes. This new felony inmate

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<sup>3</sup> Orange County Public Safety Realignment and Post-Release Community Supervision, 2011 Implementation Plan

group is expected to receive sentences from 16 months to three years. The previous average for misdemeanor inmates averaged 90 days.

### **Alternatives to Incarceration**

The OCSD plans to provide alternatives to incarceration and continue to supervise those in the care and custody of the Sheriff. The alternatives available through AB 109 legislation include involuntary home detention and electronic monitoring for the pretrial population.

At least 60 days prior to release from custody, the OCSD Inmate Services staff will meet with the Probation Department's pre-release specialists to facilitate a successful transition to community-based supervision.

### **Probation Department**

#### **Expected Additional Number of Offenders on Post-Release Community Supervision (PCS)**

The California Department of Corrections and Rehabilitation estimates there will be 1,750 offenders during the initial phase of realignment on county Post-Release Community Supervision. Included are inmates released from state prison and offenders in jail on violations.

Additionally, the County will be responsible for 1,464 offenders sentenced to county jail and potentially placed on supervised release by the court.

The term of PCS will not exceed three years, and subjects may be discharged following as little six months of successful supervision. Offenders who remain violation-free for twelve months must be discharged pursuant to law. Those in violation of the terms of PCS may be subject to "flash incarcerations" for periods up to ten days or may be subject to revocation and serve up to 180 days in county jail. A provision in Public Safety Realignment allows discharge of offenders on PCS following six months of violation-free supervision.

#### **Center for Opportunity Reentry and Education (CORE)**

In collaboration with the Orange County Department of Education, the Probation Department has established a Day Reporting Center to provide offenders with education and life skills. Adult Probationers are provided the opportunity to earn high school diplomas or General Education Development (GED) certificates.

The Probation Department assigns peace officer staffing for contact after regular business hours. This provides the ability for local law enforcement agencies to obtain specific case information on offenders under probation supervision.

### **Superior Court**

The court assumed responsibility for PCS revocation hearings beginning October 1, 2011. Upon receipt of a petition for revocation from the supervising agency, the court will accept and file for action. Within five court days, the court will conduct a probable cause case review based on the petition and a written report by the supervising agency. The court will set a date and time for the revocation hearing within 45 days of filing the petition.

### **District Attorney**

The District Attorney provides a deputy district attorney to staff the revocation courtroom. This deputy reviews petitions, negotiates pre-hearing revocation sentences and represent the people at revocation hearings.

### **Public Defender**

Public Defender staff will act as advocates for the needs and rights of their clients during the revocation process. Those in need of assistance are able to receive the support of a re-entry specialist paralegal. This staff member will assess client needs and begin to link them to services in coordination with the probation department's realignment team. If necessary, the paralegal can accompany the client to critical appointments.

### **Orange County Health Care Agency**

Since the implementation of AB109 in Orange County, in custody bookings and assessments have shown a steady increase monthly beginning in October 2011 when there were 109 inmates. In June 2012 there were 931. Between October 2011 and March 2012 the monthly average has been reported as 293.

The potential for an increase in custody costs has impacted the County in a variety of ways: having longer-term inmates changes how the Orange County Health Care Agency practices medicine due to the extraordinary costs per person for the sicker, longer-term inmates. Projected costs for the following medical needs are as follows:

- Hepatitis C \$85,000/yr., plus physician costs
- Dialysis \$100,000/yr., plus medications
- Western Medical Center, inpatient day \$1,244/day, plus physician costs
- Hemophiliac \$250,000/yr., plus physician costs
- Non-contracted Specialty \$1,000-\$150,000 per episode
- Chemotherapy \$1,950-\$195,000/yr.

Since October 1, 2011, health-related diagnoses identified include 38 HIV patients, 74 diabetics and 17 pregnant women. Post-custody behavioral health needs have been identified including an

estimated 67% of inmates needing treatment for substance abuse disorder. In addition, 23% of the inmates have mental health disorders.

### Municipal Police Departments

Municipal law enforcement agencies may be requested to provide services as needed in the support of Public Safety Realignment. They may be requested to participate in enforcement and compliance activities. For these services, municipal law enforcement agencies may be compensated as determined by the OCCCP.

## ANALYSIS

This section will compare the expected numbers of PCS cases released from State Prison to be supervised by the Probation Department and the number of AB 109 felony cases sentenced to County Jail and/or PCS supervision with the actual numbers over a six-month period. Data has been collected from the Sheriff’s Department and the Probation Department for this purpose. Data regarding representation of the people and PCS defendants by the District Attorney and Public Defender respectively has been provided by those agencies.

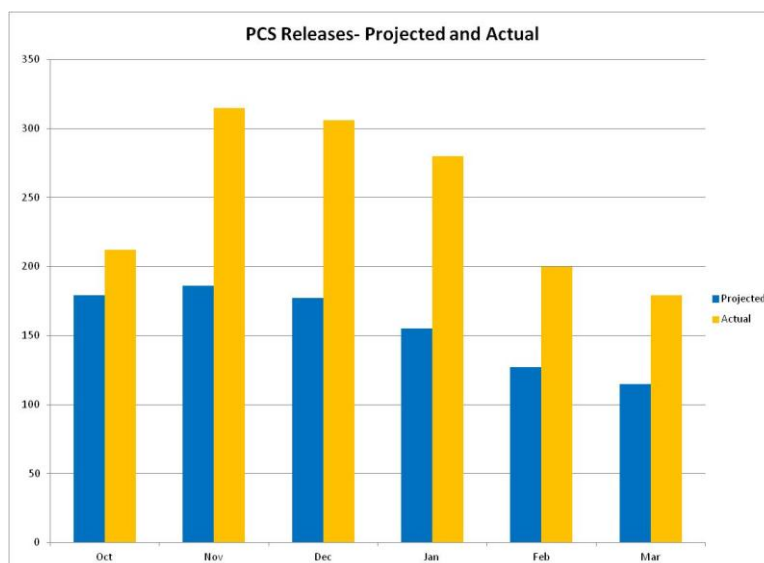
### Probation Department

Based on projections provided by the State Department of Corrections and Rehabilitation, the Probation Department initially estimated that between October 1, 2011 and March 30, 2012, approximately 939 inmates would be released from California prisons and assigned to Post-release Community Supervision in Orange County. In fact, 1492 cases were released and assigned representing a 59 percent increase over the initial estimate.

**Figure 1 – Comparison of Estimate and Actual PCS Cases**

Figure 1 shows the month-by-month estimates and actual numbers between October 1, 2011 and March 30, 2012.

While the actual numbers follow the estimated pattern in terms of higher and lower months, the estimates are consistently on the low side.



**PCS Cases Failing to Report**

As indicated above, 1492 PCS cases were referred to the Orange County Probation Department during the first six months of operation. Of that number, 248 (16.62 percent), failed to report. The following table shows the outcome or status of this group.

**Table 1 – PCS Cases Failing to Report**

<b>Outcome or Status</b>	<b>Number</b>
Warrant Issued – still outstanding	<b>49</b>
Warrant Requested (pending)	<b>55</b>
Arrested on warrant, flash incarceration	<b>19</b>
Arrested on warrant, in custody	<b>5</b>
Warrant issued, PCS revoked	<b>1</b>
ICE/Immigration releases/holds/deportations	<b>73</b>
Released to U.S. Marshals	<b>4</b>
Arrested for new law violation	<b>9</b>
Released to another jurisdiction	<b>33</b>
<b>Total</b>	<b>248</b>

Note that 77 of the above cases were released to federal authorities. The 77 are composed of ICE and U.S. Marshals cases. Another 19 were arrested and placed in custody (flash incarceration) on the authority of the probation officer for up to ten days. These subjects are assumed to have been continued on PCS upon release from custody. If those numbers are factored out, the net number failing to report is 152, which reduces the failure to report rate to just over 10 percent.

**Other Violations**

In addition to those PCS cases failing to initially report, 1,389 violations were recorded by officers in the PCS Division during the first six months of operation. Multiple violations by a single client are included in this number. There were 997 violations where the offender continued on PCS without time in custody. Violations include new law violations and technical violations such as failure to report and failing a drug test. During this same period, 392 violations were offenders continued on PCS but with time in custody.

Of the 1,389 violations, 997 (72 percent) were continued on PCS without time in custody. The remaining 392 (28 percent) served time in custody via either flash incarceration or court order for formal revocations. All time in custody was served in the county jail. No revocations have resulted in a return to state prison. According to California Penal Code section 3457, the

California Department of Corrections and Rehabilitation shall have no jurisdiction over any person under Post-Release Community Supervision.

Table 2 below summarizes the above information regarding violations.

Table 2 – Probation Violations

Action	With Custody	Without Custody	Total
Revocations	152	0	152
Flash Incarcerations	240	0	240
Other Possible Violations	0	997	997
Total	392	997	1389

### Sheriff’s Department

The Orange County Sheriff’s Department estimated an average monthly jail population increase of 143 inmates. Included are:

- Those inmates convicted of an eligible felony;
- The additional number of inmates on pretrial;
- Violators of Post-release community supervision;
- Violators of state parole; and
- Post-Release community supervisees sanction with flash incarceration of up to 10 days for each violation.

For the six-month period of this study, this estimate calculates to an estimated total of 858 inmates.

The actual numbers, for the period October 2011 through March 2012 are as follows:

Table 3 – Actual Increase in AB 109 Inmates

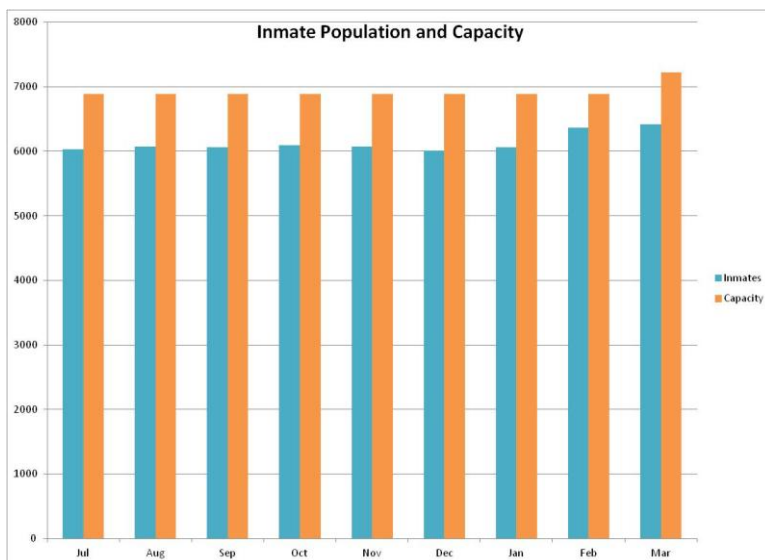
State Prison Orange County	1475
Flash Incarcerations	207
Post-release Supervision Revocations	59
Total	1741

Without the increase in pretrial inmates, (which is not tracked separately) the increase in the number of inmates as a result of AB 109 is 1741 for the six-month period from October 2011 through March 2012. This represents a difference of 883 inmates (over double) the number expected.

**Figure 2 – Total Inmate Population and Jail Capacity**

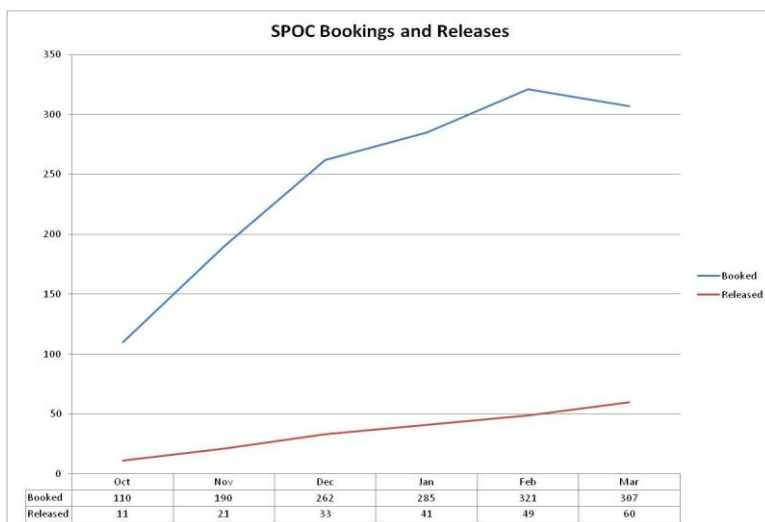
During the period from July 2011 through March 2012, the total number of inmates increased from 6031 to 6414, an increase of six percent. The number of felony inmates increased from 4590 to 5098, a change of 11 percent.

The number of misdemeanor inmates decreased, however, from 1258 to 1159, a change of approximately eight percent.



**Figure 3 - AB 109 Offenders Sentenced to County Jail**

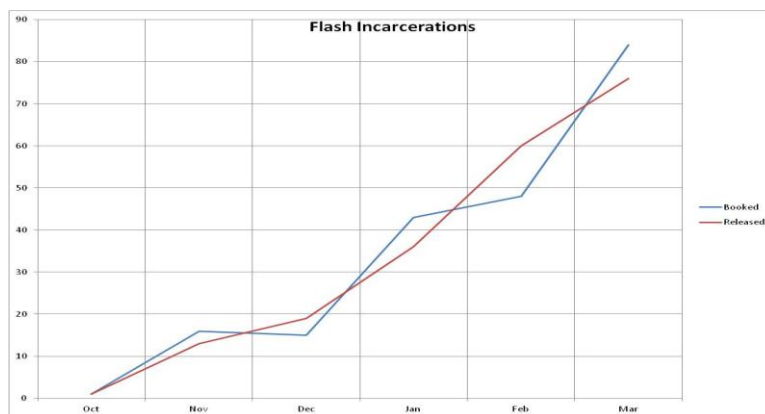
During the first six months after implementation of AB 109, State Prison Commitments to Orange County Jail ranged from 110 in October 2011 to a high of 321 in February 2012, and then dropped slightly to 307 in March 2012.



AB 109 releases ranged from 21 in October 2011 to 60 in March 2012.

**Figure 4 Flash Incarcerations by the Probation Department**

Flash incarcerations are used by the Probation Department as a mid-level sanction for violating PCS conditions. On the authority of the Probation Officer, subjects are placed in custody for up to ten days.



As shown in Figure 4, use of this enforcement feature has steadily increased. The number of PCS cases under supervision has increased from a single flash incarceration in October 2011 to a high of 84 in March 2012.

**District Attorney**

During the first six months of AB 109 operation, the Orange County District Attorney’s Office has processed 130 Post Release Community Supervision cases calendared for revocation proceedings in the Orange County Superior Court. Prior to March 1, 2012, the office had multiple Deputy District Attorneys appearing in these proceedings. Since that date, one deputy district attorney has been assigned to handle these cases. Currently this Deputy is devoting six hours a day to these PRC revocation cases. It is expected that in the near future a full time Deputy will be assigned to handle PCS revocation hearings.

**Public Defender**

Pursuant to current law and a rule of the court, the Probation Department provides a copy of the revocation petition to the Public Defender’s Office when the supervised person requests representation but is unable to employ counsel. Beginning with implementation of AB 109 in October of 2011, the Public Defender’s Office has experienced a steady increase in the number of clients coming into the system for alleged violations of Post-Release Community Supervision. The number of revocation petitions filed grew by 62 percent between January and March 2012. Following are the number of cases represented during the six-month study period.

**Table 4 – PCS Cases With Revocation Petitions**

Month	October	November	December	January	February	March
Petitions Filed	4	2	17	24	49	64

Of the 160 total revocation petitions received, the Public Defender’s Office has represented 146 PCS revocation clients. The fact that the 14 not represented is attributed to private counsel substitutions and/or conflict.

As the AB 109 workload has increased, staffing demands have increased. To date, the Public Defender’s Office has allocated a full time equivalent Deputy Public Defender and a full-time paralegal dedicated to motions and legal issues involved in PCS cases.

## **Local Law Enforcement**

\$692,354 has been allocated to Orange County municipal law enforcement agencies by the Orange County Community Corrections Partnership (OCCCP). The law states that any AB 109 funds distributed to local law enforcement must not supplant the department's operational budget and may only be used for overtime activities specific to AB 109 activities. The result of this restriction is that little, if any, of the allocated funds have been distributed to local law enforcement agencies.

Three law enforcement agencies chose to respond to the Grand Jury's invitation to submit data, anecdotal information and opinions as to the impacts of AB 109 in their respective communities. Their comments are summarized below.

### **Local Law Enforcement Positions**

The City of Tustin has submitted a letter to the Grand Jury which states that the AB 109 Post-Release Community Supervision (PCS) program is of great concern to the Tustin Police Department and has already had a negative impact upon the department and the community. He reports several incidents, one of them violent, involving PCS subjects. Many are out of compliance with their court-ordered terms of supervision.

Following is a quote from the Department: "PCS supervised individuals rejoice in knowing that they will not have to return to State Prison for violating the terms of their release, and the Tustin Police Department is considering creating a new position within the agency dedicated to dealing with them exclusively."

He further states that since October 2011, Part 1 crimes have dramatically increased over crime statistics from 2011. The Chief views the AB 109 program as a "significant, genuine threat looming over our community."

The City of Tustin has, or will, receive 26 PCS cases since AB 109 inception in October 2011. Of the 26 cases, 10 are active, seven are in custody after being arrested after release, and three have absconded and have warrants issued for their arrests. Six have not yet arrived. This represents an approximate 50% recidivism rate for the cases currently in the community. The chief expects these numbers to increase as "AB 109 continues to roll out."

### **City of Fountain Valley**

The City of Fountain Valley has submitted a letter to the Grand Jury in which he states that since the release of AB 109 PCS cases into his city, there has been an increase in certain Part 1 crimes as compared to the same time last year. "Specifically, there has been a 26 percent increase in commercial burglaries, 16 percent increase in vehicle thefts, 44 percent increase in felonious assaults, 10 percent increase in residential burglaries, 16 percent increase in thefts from vehicles and a 38 percent increase in bicycle thefts."

The City further states, “We recognize that several factors likely contributed to these increases, but since most of the probationers released had prior history of burglary and theft, the connection is not hard to make.” It should be noted that in 2011 Fountain Valley had seen a Part 1 crime decrease of 6.4 percent compared to 2010.

As of March 31, 2012, ten PCS cases were released into the City of Fountain Valley. Of those cases, one has been re-arrested and two have outstanding no-bail warrants. One of these probationers is a sex registrant, and his warrant is for failing to report upon release. Overall, the Fountain Valley Department has arrested nine PCS probationers, including those released to other jurisdictions.

Regarding AB 109 funding, Fountain Valley states, “As you know, the State provided money to counties to deal with the impact of AB 109. Here in Orange County, the only money available to Police Departments is overtime reimbursement for participating in sweeps coordinated by Probation. There is no reimbursement for our expenses in investigating, arresting and prosecuting these individuals.”

### **City of Santa Ana**

The City of Santa Ana has submitted a letter to the Grand Jury which states that as of February 29, 2012, the PCS population in Orange County was at approximately 1,300. The Santa Ana population was 375, about 29% of the total PCS population. The Santa Ana PD Gang Unit has confirmed that 180 of the PCS population have been documented as a criminal street gang and, or a validated prison gang. He indicates that at this stage of PCS, it is difficult to analyze the population’s involvement in gang-related crimes.

The Santa Ana Police Department’s Gang Suppression Unit encounters these PCS subjects on a regular basis. Interviews by gang unit officers reveal that many of these individuals have no respect for PCS and “candidly refute the terms of their supervision.”

Santa Ana asserts that the methodology used by the Department of Corrections and Rehabilitation does not take into consideration the offender’s overall criminal history; only the last commitment offense. Thus, many PCS subjects considered non-serious actually have a serious criminal background.

### **Findings/Conclusions**

In view of the short time period for this study, the trends, while interesting, are not conclusive. Additional time would allow the Grand Jury to more completely assess the impact on the County of Orange and on local law enforcement agencies. Unfortunately, because of the time limit on Grand Jury service, the 2011-2012 Grand Jury must conclude the study after addressing only a six-month period. The findings, therefore, are limited to the information on hand.

*In accordance with California Penal Code Sections §933 and §933.05, the 2011-2012 Orange County Grand Jury requires responses from each agency affected by the **Findings/Conclusions** 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.*

The 2011-2012 Orange County Grand Jury presents the following four findings:

**F1.** The number of AB 109 inmates expected by the Sheriff's Department was significantly underestimated. During the first six months of operation, the actual number of inmates during the first six months of operation exceeded expectations by more than 100 percent of the expected number.

**F2.** The number of Post-Release Community Supervision cases expected to be released from state prison to local facilities was significantly underestimated. The actual number over the first six months of operation exceeded expectations by approximately 59 percent.

**F3.** Restrictions on the use of AB 109 state funding fails to recognize the increase in crime in communities and the additional demands placed on local law enforcement agencies.

**F4.** Insufficient time has elapsed since the passage and implementation of AB109 to provide comparison of crime rates before and after the passage of the bill.

## **Recommendations**

*In accordance with California Penal Code Sections §933 and §933.05, the 2011-2012 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 with a copy to the Grand Jury.*

The 2011-2012 Orange County Grand Jury presents the following four recommendations:

**R1.** Based on the first six-months of experience with the number of AB 109 inmates received and the average length of sentence, the Sheriff's Department should prepare more informed estimates that are more informed for the 2012-2013 fiscal year. (See F1).

**R2.** Based on the first six-months of experience with the number of AB 109 state prison releases on Post-release Community Supervision, the Probation Department should prepare estimates that are more informed for the 2012-2013 fiscal year. (See F2).

**R3.** The Orange County Community Corrections Partnership (OCCCP) Executive Committee should explore a means to modify or work around the restrictions on compensating local law enforcement agencies for manpower expenses for ordinary enforcement of the law with regard to the PCS population in their communities. (See F3)

**R4.** Initiate a study by the Orange County Community Corrections Partnership (OCCCP) to compare crime rates in Orange County for the periods of October 2010 through September 2011 and October 2011 through September 2012. The comparison study to be completed by December 2012 with a copy of the study directed to the Orange County Grand Jury on or before December 31, 2012. (See F4)

## **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 therefore.

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

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

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

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 Required to Findings and Recommendations**

<b>Finding</b>	<b>Recommendation</b>	<b>Respondent</b>
F1	R1	Orange County Sheriff's Department
F2	R2	Orange County Probation Department
F3, F4	R3, R4	Orange County Community Corrections Partnership

INAPPROPRIATE GOVERNMENT INFLUENCE

**THE USE OF GOVERNMENT INFLUENCE ON A  
PRIVATE EDUCATIONAL INSTITUTION**



**GRAND JURY 2011-2012**

2011/2012 ORANGE COUNTY GRAND JURY

## **THE USE OF GOVERNMENT INFLUENCE ON A PRIVATE EDUCATIONAL INSTITUTION**

### **SUMMARY:**

On November 1, 2011, a formal and confidential complaint was sent to the Orange County Grand Jury requesting that they investigate allegations that leaders of a taxpayer funded organization had attempted to quash information and debate on issues of public concern and that these leaders had inappropriately attempted to interfere in a local city council election.

Thereafter, the Grand Jury began the accumulation of documents and conducted interviews related to the subject matter of the complaint, i.e. that certain elected officials had exerted, or attempted to exert, pressure upon an independent educational institution and a member of its faculty. This investigation led to the conclusion that various parties had misled educators and misled the Grand Jury. The Grand Jury recommends that all elected public officials be reeducated in the ethics of their offices and those organizations that they represent as a part of their public service.

### **PURPOSE**

The purpose of this study was to investigate and respond to a citizen's complaint alleging what can be summarized as misfeasance of office.

### **METHODOLOGY**

The 2011-2012 Orange County Grand Jury took the following steps to investigate the citizen's complaint letter.

- Compiled and read documents related to the complaint;
- Interviewed by telephone and in person individuals related to the complaint;
- Obtained recorded testimony under oath;
- Researched public documents relating to the ethical obligations of public officials;
- Evaluated the compiled information; and
- Generated this report.

### **HISTORY:**

#### **The Compensation Report**

In May of 2009, a private citizen and resident of Laguna Hills, Ca. began organizing a campaign effort for a position as a member of their local city council. Part of the motivation behind this effort was a news story regarding the levels of compensation for various city officials throughout Orange County and the subject city in particular.

Following interest in this subject, the prospective candidate filed a public records request in June, 2009 with the local city as well as all of the cities in Orange County in February, 2010. The responses from the cities were considerably less than was expected and lacked much of the particular information requested.

In February, 2010, some nine (9) months prior to the anticipated date of the local election, the candidate approached a local university professor as to the availability of students to assist in obtaining the balance of the information requested from the cities and to complete an analysis of the data obtained.

A professor of governmental studies at the local university recommended two students from the university's Public Administration graduate program. He believed they could benefit from the practical experience of assisting in such a study. This type of independent study, or internship, is considered a standard practice by the university system. Students are usually awarded academic credits in an amount determined by the academic supervisor in return for the practical education that is experienced.

Two students from this university's Masters in Public Administration program were subsequently assigned to the candidate's campaign with the specific understanding that they were to assist in the gathering of financial data from cities in Orange County, Ca. and in the assessment and analysis of the information obtained. A third student, from another university, joined the study group for the distinct purpose of providing assistance in graphing and charting the data.

On May 10, 2010, a report based upon the data received from the cities was generated and released to the general public<sup>1</sup>. This report, that cited the salaries and compensation of local city managers, drew the attention of local news outlets and numerous news and public interest stories resulted from the information contained in the report.

The report was strongly critical of the compensation programs for city managers throughout Orange County but concentrated primarily on the compensation program of the city manager in the city in which the candidate was seeking a city council seat.

The report was entitled "*Orange County California City Managers Compensation Report, The Cost of Local Government: A Comparative Analysis of Orange County Municipalities Expenditures for City Managers.*" On the cover page, authorship was credited to the two students who were identified by name and as "*Public Administrative Graduate Students*". A further credit was given for the graphic design to yet the third student identified as a "*Business Administration Graduate Student*".

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<sup>1</sup> *Orange County, California, City Managers Compensation Report*; May 10, 2010

The cover page stated that the report included a “*forward*” (sic) by the “*candidate*” for the city council position in question. This two page foreword describes the candidate’s difficulty in obtaining the requested information from the city in question as well as other Orange County cities. It describes the manner in which assistance was sought from the professor, who responded and what assistance was provided. “*When responses from the municipalities proved insufficient, the interns (students) used all manner of communication to acquire the compensation information necessary for the completion of this comprehensive analysis*”.<sup>2</sup>

The foreword thereafter makes campaign like statements regarding governmental “*transparency*” and public accessibility to “*municipal expenditures*”.

The report states on page three (3) of the foreword that “*the Orange County City Managers Compensation Report was commissioned by (the candidate) in March of 2010 incidental to (the candidate’s) analysis (emphasis added) of information received as a result of the Public Records Act requests....*”

Under a section entitled “*Commissioning the Study*” (page 4) the report states the candidate “*sought and received support for the independent commissioning of the Orange County City Managers Compensation Report*” from the university. “*University Public Administration Graduate students were assigned to the project and were quickly activated to receive, sort, and compile the data received. When responses from the municipalities were insufficient, the graduate students used all manner of communicating to acquire the compensation information necessary for the completion of the comprehensive analysis.*” The balance of the report is a discussion of the methodology used, along with attendant charts, as well as the analysis conducted to arrive at the report’s conclusion.

After the report regarding city managers compensation was released, the report became the frequent topic of discussion at various public and private forums. A copy of the report was re-printed in its entirety on the web site of the Orange County Register newspaper.

### **The Professor**

The university professor who was approached and asked to provide students to assist in the study is well known throughout the university systems as well as throughout the offices of local governments. He is a tenured professor in the university system, who is assigned to the developing graduate program of an affiliate university. He is the author of a number of publications where he has made his opinions known, some of which have suggested the consolidation of some Orange County cities. Some of his opinions were, and are, disagreeable to a number of local city officials. He has been a frequent lecturer and advisor in various governmental circles and has written numerous publications regarding governmental trends and

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<sup>2</sup> *Orange County, California, City Managers Compensation Report*; May 10, 2010

practices. Frequently, local politicians and governmental officials were guest lecturers in his classes.

On the same date as the release of the report, a complaint by the city manager of the subject city was lodged with the professor. The complaint was a concern that the cover page of the report stated that it was “by” the students from the university, thereby indicating that it was authored by the students and gave the report undeserved and unsanctioned credibility. This concern was raised in spite of the explanation and clarifications contained in the foreword immediately following the title page.

The professor submitted a request to the candidate that the authorship of the report be clarified so as to alleviate any possible confusion as to the origination of the report,

A subsequent “*amended*” report was thereafter issued with a “*new*” title page which credited authorship to the candidate for the city council seat, with “*Research and Technical Assistance Provided by...*” the students, who were also identified by their respective university affiliation.

The sum and substance of the balance of the report remained substantially the same.

### **The City Councilmen**

On Wednesday, May 19, 2010, a publically funded non-profit corporation organized on behalf of public entities met for their regular meeting. Present were duly elected local city councilmen who serve on the local board, the staff of the local division, as well as their regional director. Minutes were taken and recorded.

A city councilman from Tustin, CA. called the meeting to order and various items of business were discussed.

Under the heading “*Matters from the City Managers Association*”, a past president and a current director of the non-profit, who was also a current councilman from Laguna Hills, CA, the city which was the primary subject of the Compensation Report, brought to the attention of the board, a news article regarding “*City Managers Compensation*”. The minutes further indicate: “*A controversial report was released by council candidates and graduate students.... The (city where the election was taking place) is extremely upset that (the university) could be so irresponsible and that the Orange County Register would put a Watchdog column on the front page of the Orange County Register. The councilman and current director “suggested that a response is necessary in significant fashion, as the article indicates first of a series.”*”<sup>3</sup>

The minutes further show that a local city manager, “*responded by stating this type of issue happens regularly, and the need to be cautious about how to approach and avoid making this issue bigger.*” A decision was made that there will be a “follow-up” with the university and the

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<sup>3</sup> League of California Cities – Orange County Minutes, May 19, 2010

professor to address their concerns. The city councilman from Tustin, CA. agreed that the matter needed to be addressed but that they would not request a “further study”.

A meeting was scheduled for July 8, 2010, with the president of the local university, said meeting to include the councilman from Laguna Hills, CA. which was the subject of the report, the city councilman from Tustin, CA., and the existing executive director of the local division of the non-profit corporation.

In a subsequent board meeting of the non-profit corporation on Wednesday, July 21, 2010, the city councilman from Tustin, CA., “*shared that he had a productive meeting*” with the president as to the “*University Salary Survey*.” The university president “*said he would look into the matter further. It was a congenial meeting.*”<sup>4</sup>

## COMMUNICATIONS

A series of communications ensued after the release of the original report on May 10, 2010. These communications are informative as to the various actions taken by the involved individuals.

The professor stated in a letter to the Orange County Register that for purposes of clarification, the source for the graph in the original report was the candidate. He further indicated that the graduate students were working in the campaign as unpaid interns who gathered data for the report and that the report was not a product of or sanctioned by the university.

Thereafter a series of electronic communications took place between and among the various individuals. The university president communicated his displeasure with the professor related to the events that were described to him in the visit with the city councilmen.

The professor indicated in communications that he was making efforts to correct any misunderstanding regarding the authorship of the original report, but also refused to disclose personal information regarding the students as requested by one of the city officials.

Communications from the city councilman of Laguna Hills, CA. directed to university officials reflected his intentions to see that the local newspaper reject the original report as not being scholarly.

Some of the language used in these communications was included by the professor in his subsequent communications. It was represented to the Orange County Grand Jury that this particular language was “dictated” to the professor by the councilman from Laguna Hills, CA.

These demands being made upon the professor escalated, requesting that he continue to make efforts questioning the credibility of the original report regarding city compensation.

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<sup>4</sup> League of California Cities – Orange County Minutes, July 21, 2010

The candidate who released the compensation report also entered the conversation by acknowledging that the “origination of the report was exclusively mine”, and that the criticisms were thinly veiled political schemes.

Additional communications indicated that university officials were requesting that the university professor communicate directly with the local politicians so that a warmer relationship could be reestablished.

Thereafter, a flurry of e-mail communications began between the professor and university officials regarding the storm of publicity which was resulting from the report and the attendant explosion of notoriety associated with disclosure of the financial affairs taking place in nearby Bell, Ca.

## **PUBLICITY**

National news networks began a series of interviews with the students, with the candidate and others. The universities’ public relations officials became involved in an effort to establish the appropriate “talking points” for the various appearances, along with suggestions on how to capitalize on the use of the name of the university during these appearances.

The California State Legislature requested testimony from the students and the professor. A state senator congratulated the students and the professor and indicated an intention to sponsor legislation related to the subjects raised in the report.

The California State Attorney General announced an indication that his office was preparing to investigate any and all local governments that were paying city officials in excess of three hundred thousand (\$300,000) per year.

Local newspapers continued to publish articles related to the subject of the report along with recommendations for additional oversight regarding matters of compensation for various city officials.

Congratulations and accolades to the students, the professor, and the university were extensive. Demands for more transparency by the cities were being made. Plaques were being awarded.

On November 2, 2010, the election was held in Laguna Hills, CA and the candidate who originated the report was elected.

Thereafter, circumstances surrounding this matter appeared to languish for approximately ten (ten) months until information was publically circulated to the effect that the professor had been terminated from his position, and that that action was related to city officials being upset over the various political positions voiced by the professor.

## **INTERVIEWS**

During the course of this study, the Grand Jury conducted numerous interviews.

Officials of the non-profit organization indicated that any actions or efforts in this regard by the local public or elected officials were taken without approval or sanction by the state organization.

The executive director of the local division, as well as both councilmen, gave differing versions as to the events which took place before, during, and after the meeting with the university president. The information they provided to the Grand Jury also varied from the written documentation obtained.

Thereafter, the Orange County Grand Jury conducted interviews on a formal record.

### **The Executive Director**

The former Executive Director of the publically funded non-profit corporation was interviewed under oath and verified the agendas and recorded minutes of the local division, validated their accuracy, and acknowledged that there is a City Managers organization in Orange County and that they hold a non-voting position on the local board.

In summary of that interview, the director recalled the meeting where the matter of the compensation study was discussed and what actions if any were to be taken. Ultimately, the chairman of the city managers association was contacted and he agreed that a meeting with the president of the university be held. Thereafter, an appointment with the president of the university was made for a meeting that was to include the city councilman from Laguna Hills, CA. the city councilman from Tustin, CA. as well as the executive director of the local division of the non-profit corporation.

The director acknowledged attendance at that meeting, and that the city councilman from Laguna Hills, CA. brought with him a marked and flagged copy of the compensation report and provided it to the president and made it clear what areas of the report were of concern.

### **Councilman from Tustin, CA.**

A similar interview under oath was conducted with the councilman of Tustin, CA. as to the circumstances leading up to the meeting with the university president, its purpose, and the matters discussed.

The councilman indicated that the compensation report was under considerable discussion at various meetings including the meeting of the non-profit corporation and that the councilman from Laguna Hills, CA. was unhappy with it.

He acknowledged that prior discussions took place at the meeting of the non-profit as well as the decision to meet with the university president. He further acknowledged that the subject of the compensation report arose during the meeting with the president and that the professor's name arose as well. The councilman from Laguna Hills, CA. alleged that the professor was working with the candidate on the campaign and that the students were being misused by using them as campaign activists.

The Tustin city councilman also acknowledged speaking with other university officials and in those conversation discussed the universities possible involvement with local political officials in the future.

The Tustin, CA. city councilman acknowledged that the subject of city manager compensation arose because the city councilman from Laguna Hills, CA. came along and he was exercised about the report.

#### **Councilman from Laguna Hills, CA.**

The Orange County Grand Jury also conducted an interview under oath with the city councilman from the City of Laguna Hills, CA. The inquiry was directed at the events which led to the meeting with the university president, the subject of the meeting, and any results thereafter.

He acknowledged that the purpose of the meeting which took place with the president was to inform the president of the compensation report.

He further indicated to the Orange County Grand Jury that as to the future impact of these circumstances on the students of the university, that it was obvious to all concerned that it was not the best thing for them to do, i.e. to be criticizing city managers when they are the ones that do the hiring. And that the university president and the professor were bright individuals who could see the relationship and that it wouldn't be smart to slam city managers. He acknowledged that there wasn't any threat but it was just sort of self evident.

#### **THE RESULTS**

The executive officer of the local division of the publically funded non-profit corporation acknowledged that the subject of the compensation study was discussed as part of the formal meeting of the non-profit board and that the proposed action of meeting with the university president was part of that discussion. It also appeared that the city councilman from Laguna Hills, CA. was very upset with the report, and that he came to the meeting with the university president with a copy of the compensation study, and that the study was marked with considerable particularity as to those areas with which he took issue.

The university president acknowledged that the meeting took place and under what auspices. The visiting public officials questioned the accuracy of the report in question and had statistical issues with the data. They alleged that their ethical issue was that the report was written by the candidate, was a political diatribe by her and she put the university's seal on it.

After the meeting with the city councilmen and the executive director, the university president interceded in this matter and began efforts to direct the professor to correct any misunderstandings that may have taken place. He did communicate to others that the feedback from this meeting with the city councilmen and the executive director was very negative; with much resentment and that this circumstance would have an effect on students' job opportunities.

On Oct. 12, 2011, the professor resigned from his position as director of the MPA (Masters of Public Administration) at the university. A copy of his resignation was provided to the Orange

County Grand Jury wherein he stated that his motive in doing so was “*I resigned because it was clear to me that a breakaway group from the (non-profit corporation) and other disgruntled elected leaders had convinced (university) administrators that I could no longer be an effective public face for the program.*”

## **GRAND JURY RESPONSIBILITIES**

Californian Penal Code section 925a states:

*The Grand Jury may at any time examine the books and records of any incorporated city or joint powers agency located in the county. In addition to any other investigatory powers granted by this chapter, the grand jury may investigate and report upon the operations, accounts, and records of the officers, department functions, and the method or system of performing the duties of any such city or joint powers agency and make such recommendations as it may deem proper and fit.*

*The grand jury may investigate and report upon the needs of all joint powers agencies in the county, including the abolition or creation of agencies and the equipment for, or the method or system of performing the duties of, the several agencies. It shall cause a copy of any such report to be transmitted to the governing body of any affected agency.*

Section 933.6 states:

*A grand jury may at any time examine the books and records of any nonprofit corporation established by, or operated on behalf of a public entity, the books and records of which it is authorized by law to examine, and, in addition to any other investigatory powers granted by this chapter, may investigate and report upon the method or system for performing the duties of such nonprofit corporation.*

Upon the receipt of a formal complaint in regard to the foregoing information, the 2011-2012 Orange County Grand Jury investigated and came to the opinion that these circumstances warranted further review accompanied by appropriate recommendations as to any future conduct of a similar nature which may be considered.

California Government Code section #3204 is entitled “Use of office, authority or influence to obtain change in position or compensation upon corrupt condition or consideration”, and states:

*No one who holds, or who is seeking election or appointment to, any office or employment in a state or local agency shall, directly or indirectly, use, promise, threaten or attempt to use any office, authority, or influence, whether then possessed or merely anticipated, to confer upon or secure for any individual person, or to aid or obstruct any individual person in securing, or to prevent any individual person from securing, any position, nomination, confirmation, promotion, or change in compensation or position, within the state or local agency, upon consideration or condition that the vote or political influence or action of such person or another shall be given or used in behalf of, or withheld from, any candidate, officer, or party, or upon any other corrupt condition or*

*consideration. This prohibition shall apply to urging or discouraging the individual employee's action.*

The Institute for Local Government is the nonprofit research affiliate of the League of California Cities and the California State Association of Counties. "Its mission is to promote good government at the local level". In their publication entitled "Understanding the Basics of Public Service Ethics, Fair Process Laws and Merit-Based Decision-Making", (2009), they ask what is an ethics law?

*For those involved in public service, "ethics laws" tend to be those laws whose central purpose is to protect the public's trust in its public institutions and those who serve in them." Many of these ethics laws are prohibitions: they forbid certain actions that would undermine the public's trust that decisions are being made to benefit the public's interests (as opposed to the personal or political interests of the decision-maker). These laws are to prevent a decision-maker "from being involved in a decision if the decision-maker has a real or perceived conflict of interest." "Because public trust and confidence is vital to the strength of a democratic system, ethics laws sometimes set very high standards for public official conduct." "Just because a given course of conduct is legal does not mean that it is ethical.*

#### **ANALYSIS:**

From the wording in these communications, it appeared that the city councilman from Laguna Hills, CA. was influencing certain actions of the professor in that some of the exact language that was to be used in the professor's letter was the same as that which was communicated by the councilman. It is equally apparent that the professor felt compromised and was attempting to defend the actions of himself and the students in raising public interest in the political process. The issue of crediting the students with the authorship of the report on the cover page, notwithstanding the rather elaborate explanation in the attending foreword, was magnified beyond its significance, apparently for political reasons.

The history of the communications is evidence of the existence of the pressure being brought to bear upon the university and the professor.

If, by express statement or by implication, it was stated or implied to the university officials that their students may or may not have altered employment expectations based upon the outcome of those concerns as represented by the elected city officials and the representations which were made regarding the compensation report, then an ethical breach was certainly taking place. And if not, there still remains a significant cloud of impropriety and circumspection over the entire affair.

The Orange County Grand Jury is concerned that these efforts were an attempt to interfere with the academic freedom and the curriculum of an educational institution, and that these elected officials misused their position as directors of a publically funded, non-profit political organization, and their political offices, to attempt to influence the operation of an independent university, its governing officials, and its faculty and students. Equally important, their conduct

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## INAPPROPRIATE GOVERNMENT INFLUENCE

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inadvertently or otherwise, may have brought negative influences to bear on the continuing career of an education professional.

In addition, it appears that the university, its governing officials, faculty, and students were being influenced by the public officials for the purpose of manipulating circumstances related to a local election. If, for example, the report in question could be discredited, it would reflect badly upon the candidate who generated the report and who was using its results as the cornerstone of her campaign efforts.

There are many reasons why the curriculum and operations of educational institutions are considered sacrosanct, and many reasons why ethical considerations by public officials must be followed. This is certainly one.

### **FINDINGS AND CONCLUSIONS:**

In accordance with California Penal Code Sections 933 and 933.05, the 2011-2012 Grand Jury requires responses from each city 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 the 2011-2012 Orange County Grand Jury has four findings:

F1. City officials apparently misused their membership in a non-profit corporation established on behalf of public entities to promote their own political agenda by using their status with that organization in an effort to influence the officials at a local university.

F2. City officials arranged a meeting with the office of a university president indicating they were to introduce the executive director of the non-profit entity, when their intentions were to influence the university to investigate and discredit the report where students were assigned as interns to a political campaign by the Masters in Public Administration department.

F3. The influence wielded by city officials appears to have been an attempt to cause the officials of a local university, to exert influence on a member of their faculty.

F4. City officials may not have been forthcoming with the Orange County Grand Jury in their testimony about the primary purpose in meeting with university officials and the facts and circumstances related thereto.

### **RECOMMENDATIONS:**

In accordance with California Penal Code Sections 933 and 933.05, the 2011-2012 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 agencies in Orange County, the 2011-2012 Orange County Grand Jury makes the following three recommendations:

R1. The Laguna Hills, CA. City Council and the Tustin, CA. City Council should review the conduct of their city officials and determine what action should be taken so as to prevent future acts of misfeasance.

R2. Elected officials in Laguna Hills, CA. and Tustin, CA should refrain from attempting to exercise influence over public and private educational institutions.

R3. Additional efforts, including additional hours of study and training, regarding continuing ethical training should be required of those elected officials delineated in recommendation No.1.

### REQUIREMENTS AND INSTRUCTIONS:

In accordance with *California Penal Code* Sections §933 and §933.05, the 2011-2012 Orange County Grand Jury requires responses from each agency affected by the **Findings/Conclusions** and **Recommendations presented** in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

*“Not later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section §914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations...”*

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

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

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

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

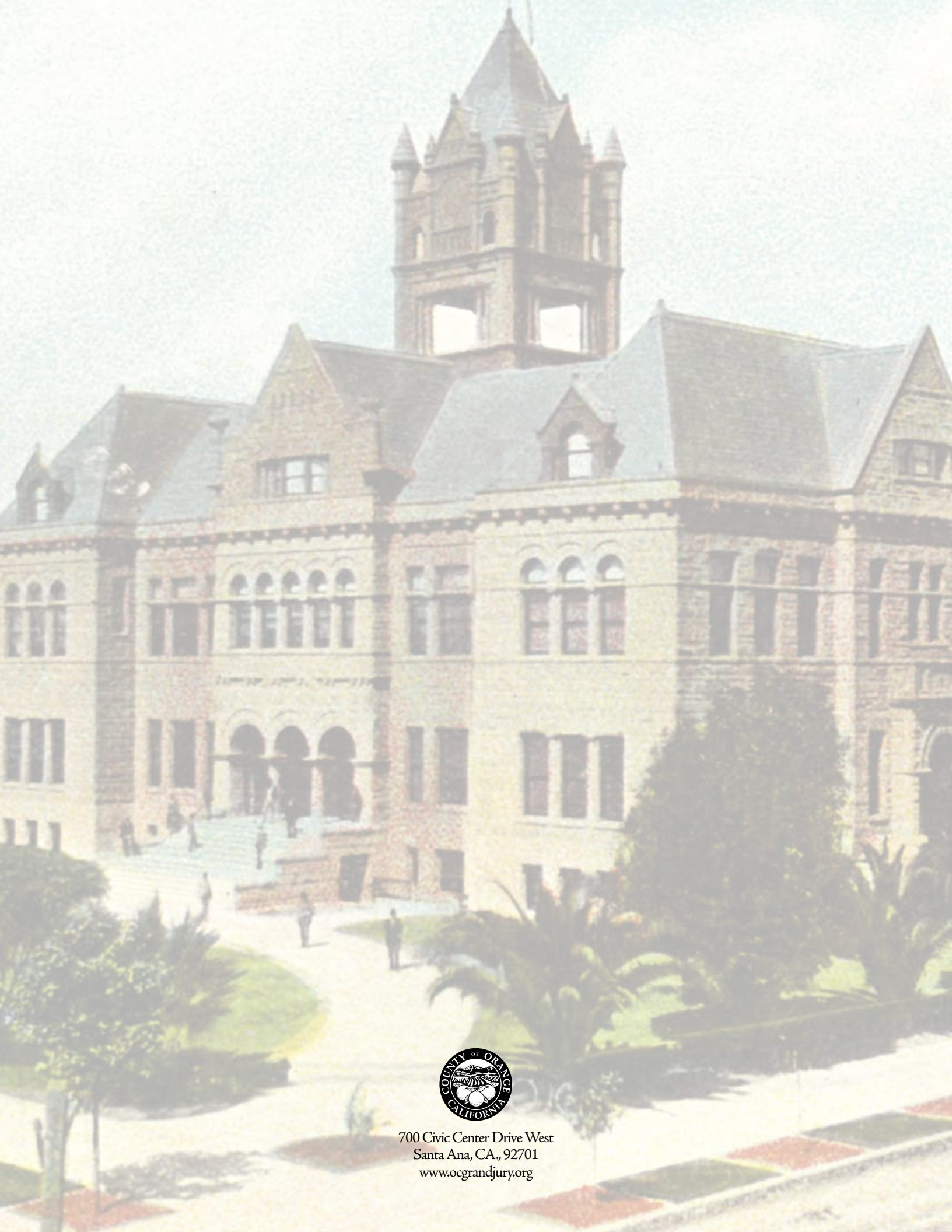
INAPPROPRIATE GOVERNMENT INFLUENCE

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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 it is not warranted or is not warranted or is not reasonable, with an explanation therefore.
- (c.) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making aspects of the findings or recommendations affecting his or her agency or department.

RESPONSE MATRIX:

	F1	F2	F3	F4	F5	R1	R2	R3
City of Laguna Hills	X	X	X	X				
City of Tustin	X	X	X	X				
City of Laguna Hills						X	X	X
City of Tustin						X	X	X



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