

**THE  
FRESNO COUNTY**



**GRAND  
JURY**

**2010-2011 FINAL REPORT**

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**THE  
FRESNO COUNTY**



**RAND  
JURY**

**2010-2011 FINAL REPORT**

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**PRESIDING JUDGE OF THE FRESNO COUNTY SUPERIOR COURT**

**HON. M. BRUCE SMITH**  
Presiding Judge for 2009-2010



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“ALL THAT’S NECESSARY  
FOR THE FORCES OF EVIL TO WIN  
IN THE WORLD IS  
FOR ENOUGH GOOD MEN  
TO DO NOTHING.”

~ *Edmund Burke*

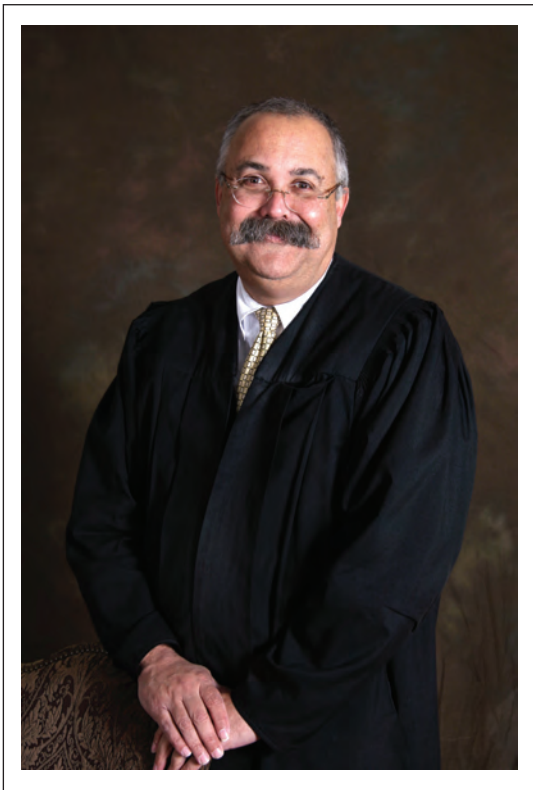
BRITISH STATESMEN AND PHILOSOPHER (1729-1797)



**GRAND**  
**JURY**

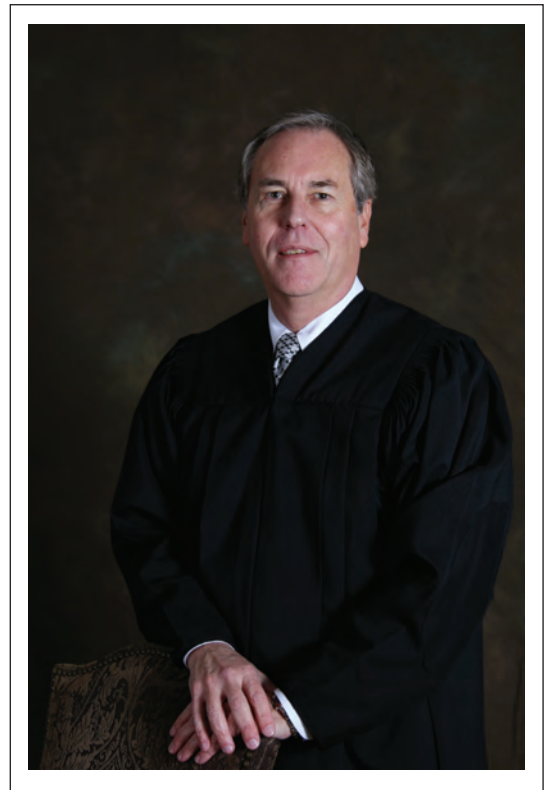
**PRESIDING JUDGES**

**HON. M. BRUCE SMITH**



**PRESIDING JUDGE**  
**2010**

**HON. GARY D. HOFF**



**PRESIDING JUDGE**  
**2011**





## Superior Court of California County of Fresno

CHAMBERS OF  
**M. BRUCE SMITH**  
Presiding Judge 2010

**GARY D. HOFF**  
Presiding Judge 2011

1100 VAN NESS AVENUE  
FRESNO, CALIFORNIA 93724-0002  
(559) 457-2033  
FAX (559) 457-2035

**At the beginning of the term of the 2010-2011 Grand Jury, the members were advised that being a member of a grand jury is a position of honor and great responsibility. It calls for diligence, impartiality, courage, and the exercise of calm and considered judgment. At the outset of their service, they were also advised that the Grand Jury will make an important contribution to local government, and that the judges of the Fresno County Superior Court appreciate and value their service.**

**This Grand Jury has continued the fine tradition of their predecessors, and their enthusiastic and dedicated work is sincerely appreciated. The leadership and dedication of the foreperson, Rod Coburn, must be noted, acknowledged and praised. Several new and innovative procedures were adopted this year, which will enhance the operations of future grand juries in this county. The foreperson, along with all members, performed this service with minimal monetary compensation, for travel and a small per diem allowance.**

**All citizens residing in Fresno County are invited and welcome to apply for the responsible position of serving as a grand juror and to continue this important function of public service.**

**Hon. M. Bruce Smith**  
Presiding Judge 2010

**Hon. Gary D. Hoff**  
Presiding Judge 2011



# County of Fresno

## GRAND JURY

June 30, 2011

To: The Honorable Gary Hoff  
Residents of Fresno County

It is my pleasure, on behalf of the 2010-2011 Fresno County Grand Jury, to submit this final consolidated report of our service year. The report is the culmination of a year of diligent, dedicated commitment to the historical and legal notion of citizen oversight of governmental entities.

This jury began its service year June 2010 following their selection. Seven members were holdovers from the previous year's grand jury. The nineteen jurors bonded together quickly into a cohesive investigative force. All jurors completed a two-day training course, sponsored the by California Grand Jurors' Association, which provided invaluable background material and resources.

During the course of its year, the jury received 86 citizen complaints, 38 initiated by prisoners at Pleasant Valley State Prison in Coalinga alleging a variety of mistreatment, mismanagement, and medical issues. The remaining 48 complaints emanated from Fresno County citizens. All complaints were read to the entire grand jury, and when appropriate, assigned to a committee for study and investigation. Not all complaints were committee referred, as these complaints were deemed beyond the purview of the grand jury. Twenty-two investigations were undertaken culminating in the seven reports included herein. All complainants received an acknowledgement letter of receipt of their complaint allegations.

The grand jury, whether as a subject of investigation or not, evaluated the performance level of multiple governmental entities within Fresno County. A predominate reoccurring theme is the additional stress placed on all levels of government, the result of diminished resources secondary to fiscal and budgetary issues beyond their control. The grand jury had the pleasure of working with really good people in the employ of these entities. Despite the financial limitations, requiring a reduction in workforce, the remaining personnel appear fully committed to their agencies mission and to their constituents.

The jury also noted personal egos of senior management in several governmental entities, which appeared to create territorial domains. The jury further observed secondary agendas imbedded within received testimony and complaints.

This jury's budget was impacted in a similar fashion as Fresno County departments. Several grand jurors did not seek full or partial reimbursement during their service year. Subsequent to a request by the Elections Department, several jurors also provided assistance without reimbursement in the days following the November election.

Final reports from previous grand juries were evaluated as a matrix for further investigation. This grand jury declined to initiate new investigations, primarily feeling insufficient time had elapsed after the initial report to allow for the fulfillment of their response commitment, and/or other oversight entities were maintaining sufficient monitoring.



Yearly, the Fresno County Grand Jury receives nearly half of its complaints from inmates housed in Pleasant Valley State Prison. This, and previous grand juries, adopted a policy of not pursuing an investigation into the complaint allegations until the completion of the redress appeal procedure provided to every prisoner in Title 15, Section 8 of the California Code of Regulations (602 process). The grand jury, by law, must initiate an inquiry into all state prisons within their county. The jury chose to evaluate the appeal procedure compliance with Title 15. The grand jury's findings and conclusions are contained in the enclosed Report #3. The jury reaffirmed its policy in non-involvement until the State's process is completed.

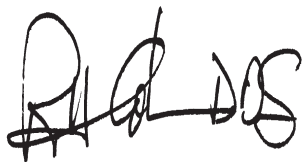
The November 2010 general election became a public issue focusing on allegations of voter disenfranchisement, the result of closure or relocation of polling sites, subsequent to funding reductions to the Elections Department. The election produced several heated races yielding to an equally heated vote count. This grand jury was profoundly involved in evaluating the pre-election processes, Election Day polling site observation, and election evening vote tabulation. Jurors provided assistance to the election's department as requested. Report #4 resulted from a thorough investigation, augmented by first hand experiences.

Serving the citizens of Fresno County this year was an immense honor for us all. The thoroughness and technical excellence of our investigations and reports is the result of the cumulative effort of all jurors who eagerly participated in our oversight mandate. I especially thank the year's officers and committee chairs for their leadership and countless hours which allowed for an efficient and effective use of the time the jury devoted to its tasks: Gary Gladding, Foreman Pro Tem; Medsie Bolin, recording secretary; Gary Greenberg, Sergeant at Arms; Nené Casares, Henry King, Rory Smith, Robert Farmer, Gary Greenberg and Gary Gladding who served as committee chairs. A special thank you acknowledgement to Jim Vaux, who chaired the editing committee. Without his skill in writing, composing, and editing, our reports would lack the technical excellence they contain.

No civil grand jury of Fresno County functions in a vacuum. Without the guidance and assistance from Presiding Judges Bruce Smith and Gary Hoff our tasks could have been more arduous. I thank Assistant County Counsel Art Wille, and Chief Assistant District Attorney Kelly Keenan for their sage advice and direction. Special acknowledgement must be given to Sherry Spears, Court Division Manager. Her dedication to this and all Fresno County Grand Juries comes with thoughtful counsel, a friendly smile, and keen observations gleaned from her history with many such juries.

As has been written before, "the reports and recommendations of the grand jury are often the first step in shedding light on problems within government agencies." If the reports and recommendations have a lasting effect, the citizens of Fresno County must hold leadership accountable for their conduct and implementation of the recommendations.

My fellow Fresno County Grand jurors and I are privileged to serve the citizens of Fresno County. We encourage all citizens to be well educated on current issues; hold accountable elected and appointed leadership, and support the mission of the civil grand jury system.



Rod H. Coburn, D.D.S. Foreman  
Fresno County Grand Jury 2010-2011



THE COUNTY OF FRESNO  
2010 - 2011

# GRAND JURY

NAME	SIGNATURE
HUGH AWTRY II	<i>Hugh H. Awtry II</i>
RONALD BATEN	<i>Ronald Baten</i>
MEDSIE BOLIN	<i>Medsie Bolin</i>
GAYLE D. "CINDY" CARESS	<i>Gayle D. "Cindy" Carress</i>
NENÉ CASARES	<i>Nene Casares</i>
ROD COBURN, D.D.S.	<i>Rod Coburn D.D.S.</i>
ROBERT FARMER	<i>Robert Farmer</i>
STEVE FORTNER	<i>Steve Fortner</i>
KAREN GENOVESE	<i>Karen Genovese</i>
GARY GLADDING	<i>Gary Gladding</i>
GARY GREENBERG	<i>Gary Greenberg</i>
ROBERT ISAACS	<i>Robert Isaacs</i>
MICHAEL KILIJIAN	<i>Michael Kilijian</i>
HENRY KING	<i>Henry B. King</i>
THOMAS MORTON	<i>Thomas Morton</i>
LINDA REED	<i>Linda Reed</i>
RORY SMITH	<i>Rory Smith</i>
GARY TATHAM	<i>Gary C. Tatham</i>
JAMES VAUX	<i>James Vaux</i>



## MISSION STATEMENT

The Fresno County Grand Jury serves as the ombudsman for citizens of Fresno County. The primary function of the Grand Jury, and the most important reason for its existence, is the examination of all aspects of county government and special districts assuring honest, efficient government in the best interests of the people.

Their responsibilities include receiving and investigating complaints regarding county government and issuing reports. A Grand Jury Final Report is issued in June of each year. Grand Jurors generally serve for one year although the law provides for holdovers for a second year to assure a smooth transition.



# THE COUNTY OF FRESNO

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# 2010-2011 GRAND JURY

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**FRONT ROW** *(Left to Right)*

Thomas Morton, Linda Reed, Rory Smith, Gary Tatham, Karen Genovese,  
Nené Casares, Henry King, Cindy Caress, Gary Greenberg,  
Robert Farmer, Medsie Bolin *and* Robert Isaacs

**BACK ROW** *(Left to Right)*

Michael Kilijian, Steven Fortner, Hugh Awtrey II, Rod Coburn DDS,  
Gary Gladding, Ronald Baten *and* James Vaux





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# THE GRAND JURY PROCESS

❖ APPLICATION INFORMATION

❖ FUNCTIONS

❖ COMPLAINT PROCEDURE

# APPLICATION INFORMATION

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The Fresno County Grand Jury serves as the civil watchdog for the County of Fresno. Their responsibilities include investigating complaints regarding county and city governmental agencies and issuing reports when necessary.

In the early months of each calendar year, the Fresno County Superior Court begins the process for selecting a new grand jury. Those with an interest in serving on the grand jury may contact the Juror Services Manager and ask to be considered as a prospective grand juror. In addition to self referrals, names of prospective grand jurors are suggested by the active and retired judicial officers of the Fresno County Superior Court and the current grand jury members.

The basic qualifications include being a citizen of the United States, being at least 18 years of age and a resident of Fresno County for at least one year prior to selection. Applicants should also be in possession of their natural faculties and have ordinary intelligence, sound judgment and good character. They should be able to speak and write English and have some computer literacy.

Questionnaires are mailed to all prospective grand jurors after the nominations are received. All prospective grand jurors are required to have a background check. All prospective grand jurors must be officially nominated by a sitting Superior Court Judge and may be asked to come in for an interview. The Judges then consider all prospective grand juror nominees. They nominate 30 prospective jurors, who are invited to an impanelment ceremony in mid-June. Names are drawn at random to serve on the nineteen member grand jury. Generally, there are two to four members from the outgoing grand jury who holdover to insure a smooth transition.

Prospective grand jurors should be aware of the responsibilities and time commitment involved. Jurors typically spend a minimum of 40 hours per month on meetings, interviewing, conducting investigations and writing reports. The service period from July 1 to June 30 of the following year.

For additional information or to nominate yourself or someone else, contact the Juror Services Manager at the Fresno County Courthouse, 1100 Van Ness Avenue, Room 102, Fresno, CA 93724-0002 or call 559-457-1605.

# FUNCTIONS

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**History:** In 1635, the Massachusetts Bay Colony impaneled the first grand jury to consider cases of murder, robbery and wife beating. By the end of the colonial period the grand jury had become an indispensable adjunct to the government. The U.S. Constitution's Fifth Amendment and the California Constitution call for the establishment of grand juries. The California Constitution provided for prosecution by either indictment or preliminary hearing.

In 1880, statues were passed which added duties of the grand jury to investigate county government beyond misconduct of public officials. Only California and Nevada mandate that civil grand juries be impaneled annually to function specifically as a "watchdog" over county government. California mandates formation of grand juries in every county able to examine all aspects of local government adding another level of protection for citizens.

**Functions:** The civil grand jury is a part of the judicial branch of government, an arm of the court. As an arm of the Superior Court, the Fresno County Grand Jury is impaneled every year to conduct civil investigations of county and city government and to hear evidence to decide whether to return an indictment. The civil grand jury in its' role as civil "watchdog" for the County of Fresno has two distinct functions:

- ❖ Investigations of allegations of misconduct against public officials and determine whether to present formal accusations requesting their removal from office under three feasancess" Nonfeasance, misfeasance and malfeasance.
- ❖ Civil Investigations and Reporting, the watchdog function, is the PRIMARY duty of a regular Civil Grand Jury. In addition to mandated state functions, the jury may select additional areas to study publishing its' findings and recommendations in a report at the end of the year.

Both the criminal and civil grand juries have the powers to subpoena. The criminal grand jury conducts hearings to determine whether there is sufficient evidence to bring indictment charging a person with a public offense. However, the district attorney usually calls for empanelment of a separate jury drawn from the petit (regular trial) jury pool to bring criminal charges. However, in Fresno County a Superior Court Judge is the determiner of facts relative to holding an individual to answer criminal charges.

**Civil Watchdog Functions:** Considerable time and energy is put into this primary function of the civil grand jury acting as a the public's "watchdog" by investigating and reporting upon the operation, management, and fiscal affairs of local government (eg Penal Code § 919, 925 et seq.) The civil grand jury may examine all aspects of county and city government and agencies/districts to ensure that the best interests of the citizens of Fresno County are being served. The civil grand jury may review and evaluate procedures, methods and systems used by county and city government



to determine whether more efficient and economical programs may be used. The civil grand jury is also mandated to inspect any state prisons located within the county including the conditions of jails and detention facilities.

**Citizen Complaints:** The civil grand jury receives many letters from citizens and prisoners alleging mistreatment by officials, suspicions of misconduct or government inefficiencies. Complaints are acknowledged and investigated for their validity. These complaints are kept confidential.

**Criminal Investigations:** A criminal jury is separate from a civil grand jury and is called for empanelment by the district attorney. A hearing is held to determine whether the evidence presented by the district attorney is sufficient to warrant an individual having to stand trial. Note: This is not the procedure in Fresno County, a Superior Court Judge calls for a criminal jury if a matter continues on in the courts to trial.

The grand jury system as part of our judicial system is an excellent example of our democracy. The grand jury is independent body. Judges of the Superior Court, the district attorney, the county counsel, and the state attorney general may act as advisors but cannot attend jury deliberations nor control the actions of the civil grand jury (Penal Code § Code 934, 939).

\*2006 - 2007 Grand Jury Final Report

# COMPLAINT PROCEDURE

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It is the right of Fresno County residents to bring attention of the Civil Grand Jury matters involving public agencies which may concern them.

Although the Civil Grand Jury has limited statutory ability to provide solutions, all Fresno County residents are encouraged to communicate their grievance to the Grand Jury for its consideration. All complaints received by the Grand Jury are confidential, but they must be signed by the complainant or they will not be acted upon.

A complaint form can be obtained in the following ways:

1. Telephone the Superior Court at (559) 457\*1605 and request a citizen complaint form
2. Grand Jury website ([www.fresnosuperiorcourt.org](http://www.fresnosuperiorcourt.org))
  - a. Click on jury
  - b. Click on Grand Jury
  - c. Click on complaint form
  - d. Double click on complaint form and print

**Sample Complaint Form page follows--**



# FRESNO COUNTY GRAND JURY 2010 - 2011

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## — FINAL REPORTS AND RESPONSES —

- ❖ Fresno County Sheriff's Office Fleet Maintenance Program
- ❖ The District Attorney's Independent Review of Officer Involved Shootings in the County of Fresno
- ❖ Pleasant Valley State Prison - Review of the CDC 602 Prisoner Complaint Process
- ❖ Review of the Election Process Used in Fresno County During the November 2010 General Election
- ❖ Justice Runs Afoul in Fowler
- ❖ Mental Health Services Provided in the Fresno County Jail
- ❖ City of Fresno - Is the "Office of Independent Review" Relevant In Its Current Form?

# REPORT #1

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## FRESNO COUNTY SHERIFF'S OFFICE FLEET MAINTENANCE PROGRAM



**FILED**

JAN 21 2011

FRESNO COUNTY SUPERIOR COURT

By \_\_\_\_\_ DEPUTY

**2010-2011  
FRESNO COUNTY GRAND JURY**



**FINAL REPORT  
#1**

**Fresno County  
2010 - 2011 Grand Jury  
Report # 1**

**Fresno County Sheriff's Office Fleet Maintenance Program**

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**INTRODUCTION**

It is incumbent upon all government agencies to be cost effective in their operations. A committee of the 2010-2011 Fresno County Grand Jury determined the Fresno County Sheriff's Office (FSO) could reduce expenses by utilizing Fresno County Fleet Services for maintaining its patrol vehicles. We recommend the FSO conduct a pilot program to compare fleet maintenance costs and services between County Fleet Services and its contracted outside vendors.

**BACKGROUND**

In 2003, the Fresno County Board of Supervisors (BOS) approved a proposal for the FSO to assume the responsibility for purchasing and maintaining its own vehicle fleet. County Fleet Services, which is part of the General Services Agency (GSA), previously managed this function. This action mandated the transfer of employees, salaries and budgets to the FSO. A subsequent review was done by the BOS in 2009.

**PURPOSE OF THE INVESTIGATION**

- Determine if the rationale used by the BOS in 2003 and cost comparisons used in the 2009 review are still valid;
- Compare the fleet maintenance services used by FSO with other government agencies;
- Analyze the FSO Take-Home Vehicle Program;
- Determine if a pilot program comparing maintenance costs between County Fleet Services and other FSO contracted vendors can result in meaningful cost savings.

**DISCUSSION**

In the early 2000's, the FSO became increasingly dissatisfied with the fleet management program provided by County Fleet Services. The FSO was concerned with the methods the GSA used to charge them for vehicle depreciation, replacement charges, fixed charges for overhead expenses and non-competitive maintenance costs. A review by the Sheriff and the Manager of GSA culminated on April 29, 2003 with a proposal to the BOS recommending several actions. As a result, the leasing/purchasing of new vehicles, vehicle maintenance and the appropriate budgets and personnel were transferred to the FSO. In addition, a Vehicle Take-Home Program was implemented to "improve productivity and reduce daily wear and tear on the patrol cars."

### **Sheriff Vehicle Purchasing**

After the FSO assumed the responsibility for purchasing its own vehicles in 2003, they eliminated the leasing option. This change allowed them more control and flexibility of vehicle selection and depreciation.

Currently, the FSO purchases vehicles as needed through a local dealer. The FSO patrol vehicles are purchased new and driven an average of 45,000 miles per year and are retained as long as they are serviceable. Recognizing there are a multitude of variables that impact the timing of purchasing new patrol vehicles, the FSO makes every effort to retire blocks of cars when they, as a group, have attained five years of service and/or 125,000 miles.

The grand jury feels the current purchasing program is effective and offers no recommendations for changes at this time. However, after 2011, Ford will no longer manufacture the Crown Victoria Interceptor model which will require changes in what patrol vehicles are acquired.

### **Sheriff Take-Home Vehicle Program**

Before the inception of the Take-Home Vehicle Program in 2003, FSO provided officers with patrol cars based on a system of shared or "pooled" vehicles. Deputies coming on duty were issued an available vehicle, and may or may not get a vehicle they had previously driven. Vehicles varied in age and condition, and included those kept on hand as "extras" to provide transportation during regular vehicle maintenance and down time. Prior to implementing the Take-Home Vehicle Program, approximately 164 deputies used 87 vehicles in patrol operations.

The rationale used to justify the Take-Home Vehicle Program included:

- Citizens would feel safer as more patrol cars would be on the street and parked in residential neighborhoods, rather than having deputies drive to and from work, training and other official duties;
- There would be less wear and tear on the vehicles than assigning vehicles to a pool. Vehicles would be better maintained and last longer in the care of one driver;
- Productivity will increase because deputies would no longer have to set up and remove their equipment from their vehicles at the start and end of each shift.

In 2003, prior to allowing deputies to take their patrol cars home, patrol cars would be driven approximately 45,000 miles per year. Today, patrol cars are driven an average of 20,000 miles per year. Consequently, vehicles experience less wear and tear and are maintained better because the driver is more attuned to the vehicle's need for repairs. Vehicle life cycle has also improved.

Currently, the FSO has designated 456 vehicles for patrol use. Although more vehicles are now required to fulfill the needs of deputies, the cost per vehicle has gone down. The value for each vehicle at auction has generally improved. Although, in recent years, many vehicles are driven longer to extend their use and this may result in a lower value when sold.

The grand jury determined the current FSO Take-Home Vehicle Program is successful and meets all the objectives used for initiating the program. A review of vehicle take-home



policies for other Fresno County departments is being conducted to determine if they are equally successful and to ensure no violations of department policy exist.

### **Sheriff Fleet Maintenance**

A cost comparison of services between County Fleet Services and qualified outside vendors, prepared by the Fresno County Administrative Office in August 2009, indicated County Fleet Services could maintain the FSO vehicles cheaper for "A" service (see page 7). However, the FSO continues to use its own internal resources and contracted sources to maintain its fleet. The study was inconclusive because the FSO data was based on 2009-2010 budget information, which was not revised. Invoices from FSO vendors indicate parts and service savings if County Fleet Services performed the work. The grand jury received testimony the FSO could save \$200,000 - \$400,000 annually using County Fleet Services exclusively.

As part of the grand jury investigation, County Fleet Services compiled updated costs using factory suggested repair times and actual fleet service hours worked, and not industry standards. This provided actual costs that are more realistic when compared to the costs supplied by the FSO and their contractors. Additionally, County Fleet Services could provide dedicated mechanics and space for Sheriff's vehicles to ensure timely service and expeditious turnaround time. FSO patrol cars are serviced every 4,000 miles. Pick up and delivery service, as well as pool vehicles, could be made available. This issue requires further discussion between FSO and County Fleet Services. (See Addendum #1)

As a result of these findings, the grand jury proposes the initiation of a pilot program to compare the actual patrol vehicle maintenance costs performed by County Fleet Services and current outside contractors during a six-month period. Additional details are found in our recommendations.

## **CONCLUSIONS**

The grand jury is impressed with the overall management and operation of the FSO vehicle maintenance program and the changes being implemented by County Fleet Services. Recent management/personnel changes are optimizing current operations, utilizing efficient business practices. The grand jury is confident there are additional cost savings to be realized.

## **FINDINGS**

- F101 The FSO fleet management program ensures optimized vehicle life cycle and trade-in values.
- F102 The FSO Take-Home Vehicle Program has proven effective and meets the original objectives of the program.
- F103 The FSO endeavors to maintain its vehicles in a cost effective manner. However, new information from County Fleet Services will result in additional savings. (Addendum #1)

## RECOMMENDATIONS

- R101 Develop a Six Month Pilot Program to evaluate FSO vehicle "A" service maintenance (see list at end of report) and cost comparisons between County Fleet Services and outside contractors. If County Fleet Services is found to be more efficient and cost effective, a one-year contract should be implemented with an option for a second and third year. The grand jury concludes the pilot program will show a cost savings for the FSO vehicle maintenance program. (F103)
- R102 The County Fleet Service manager should review the vehicle take-home policies of all Fresno County departments, ensuring compliance with County policies and procedures. (F102)

## REQUEST FOR RESPONSES

Pursuant to Penal Code 933.05, the Fresno County Grand Jury requests responses to each of the specific findings and recommendations. It is required that responses from elected officials are due within sixty days of the receipt of this report and ninety days for all others.

### RESPONDENTS

- Phil Larson, Chairperson, Fresno County Board of Supervisors (F103, R101-102)
- Margaret Mims, Fresno County Sheriff (F101-103, R101)
- John Navarrette, Fresno County Administrative Officer (F101-103, R101-102)

## SOURCES AND REFERENCES

- Fresno County BOS Agenda Item – Fresno County Sheriff's Department Fleet Management Proposal – April 29, 2003
- Fresno County BOS Briefing Report – August 29, 2009
- Fresno County BOS Agenda Item – Administration of the Sheriff's Fleet Program and Information Technology Unit – September 29, 2009
- Fresno County Inter-Office Memo to Allen Moore from Greg Buckley dated November 10, 2010 – Subject: Sheriff R.F.P.
- Interviews with FSO representatives
- Interviews with County Fleet Service representatives
- Web sites:

### **San Jose**

<http://www.government-fleet.com/News/Story/2010/10/Audit-Calls-for-San-Jose-to-Eliminate-93-Take-Home-Vehicles.aspx>

### **San Luis Obispo**

<http://www.government-fleet.com/News/List/Tag/take-home-vehicles.aspx>

**Addendum #1**

<b>Description</b>	<b>Fleet Services</b>	<b>Sheriff</b>	<b>Comments</b>
<b>Vehicle acquisition and up-fitting</b>	Utilize county contracts	Utilize county contracts	Patrol cars/trucks - \$34,000/\$40,000
<b>Vehicle maintenance costs (sedans)</b>	\$41.93 for lube, oil and filter (including everything on the "A" service list plus the air filter).	A-1 contract \$47.20 - \$52.00 (net 20% discount) and Goodman's contract \$51.05 for "A" service list. The use of two vendors ensures quick turnaround and less downtime for deputies.	Sheriff has 2 contracts for vehicle maintenance and repair in Fresno/Clovis metropolitan area – includes pick up and delivery service.
<b>Other Services cost (e.g. front end alignment, A/C service) for sedans, trucks, SUV's &amp; 4x4 trucks)</b>	\$54.59 per hour plus parts (2010-2011 Rate)	A-1 contract \$48/\$47.20 (both net 20% discount) and Goodman's contract \$39.95/\$61.67	Sheriff has 2 contracts for vehicle maintenance and repair in Fresno/Clovis metropolitan area – includes pick up and delivery service. Dealership labor rates \$110/hour; Independent Shop labor rates \$85 - \$92/hour
<b>Hourly rate for additional vehicle services (sedans, trucks, SUV's and 4x4 trucks)</b>	\$54.59 per hour plus parts (2010-2011 Rate)	A-1 contract \$80/hr plus parts; Goodman's contract \$54/hr plus parts	
<b>Other vehicle maintenance costs and repairs/services (e.g. transport vans)</b>	\$54.59 per hour plus parts (2010-2011 Rate)		
<b>Buses/heavy duty trucks service and safety inspections</b>	\$59.82 per hour plus parts (2010-2011 Approved H.D. Rate)		
<b>Smog checks</b>	½ hr. @ \$27.29 (no certificate required)	A-1 contract \$38.40 (net of 20% discount); Goodman's contract \$24 (smog certificate included)	Sheriff has 2 contracts for vehicle maintenance and repair in Fresno/Clovis metropolitan area – includes pick up and delivery service
<b>Vehicle Database</b>	Fleet System tracks costs per vehicle/equipment for acquisition and maintenance, fuel usage, mileage, years of service, depreciation, disposal cost of vehicle	FASTER System tracks costs per vehicle/equipment for acquisition and maintenance, fuel usage, mileage, years of service, depreciation, disposal cost and life cost of vehicle	

<b>Overhead/management of Fleet Program</b>	No additional administration – existing Fleet Manager would oversee division	Sheriff Sergeant	
<b>Personnel required to manage Sheriff's Fleet</b>	Existing GSA Fleet Manager (\$112,600) would oversee Sheriff's Fleet at no additional cost to the Sheriff, 2 auto mechanics (\$151,638) allocated to the Sheriff would need to be transferred to GSA, existing GSA Acct Clerk staff would handle billing/tracking	1 Sheriff's Sergeant (\$153,140), 2 Auto Mechanics (\$151,638), 1 Acct Clerk III (\$60,287)	If Sheriff's fleet is managed by GSA, it could delete one Sheriff's Sergeant and Account Clerk III (annual savings estimate = \$213,427); however, Sheriff would need an equipment coordinator. Alternative for Sergeant position: reassign Sheriff Sergeant to other Sheriff Office responsibilities
<b>Carwash costs</b>	County contracts	County contracts	
<b>Vehicle towing costs</b>	County contracts	County contracts	
<b>Tire acquisition</b>	County contracts	County contracts	
<b>Body shop repair costs</b>	Use three bid system	Use three bid system	
<b>Parts inventory</b>	Maintain complete inventory of maintenance and repair parts (e.g. batteries, filters, tires, brakes, belts, wipers, tune-up parts, A/C parts, Freon		GSA indicates that parts inventory is monitored regularly to ensure obsolete parts are not maintained
<b>Space for Parts Inventory</b>	GSA allocates 5,000 sq. ft. for Fleet. Of this number 700 sq. ft. would be allocated to the Sheriff for inventory		Space cost for GSA Fleet is included in their overhead rate.
<b>Risk management costs – Sheriff's vehicles vary from "normal use" (due to home garaging, use in high speed pursuit and public safety situations and up-fitting of vehicles)</b>	If Sheriff's Fleet is managed by GSA, it would become part the County risk management program	Not currently part of the County risk management program. Estimated cost to establish a Totally Damaged Vehicle Fund: \$400,000/year + vehicle repair costs of \$43,070 annually. The repair cost estimate is based on countywide costs. Actual costs may be higher based on Sheriff's vehicle usage needs.	Adding the Sheriff's vehicle repair & replacement programs would more than likely negatively skew the cost of these programs to the general Fleet; therefore, it is recommended a separate reserve be created

"A" service list for Fleet Service and contract providers is as follows:

- Check operator complaints
- Change oil, change oil filter, check oil pan plug and replace as needed
- Change air filter upon approval (add cost for filter)
- Rotate tires and advise on replacement
- Check tire pressure and add air as needed
- Inspect brake rotors/pads and advise on replacement

- Lube chassis, doors and hinges, and hood release cable
- Check brake fluid level, coolant level and add as needed, differential fluid level and add as needed, transmission fluid level and add as needed, power steering fluid and add as needed, windshield washer fluid and add as needed, and battery level and add as water as needed
- Clean battery cable connections as needed
- Inspect all drive belts and advise Sheriff of connection
- Inspect cooling system hoses, clamps and water pump and advise sheriff of condition
- Inspect drive line and lube u-joints and advise Sheriff of condition
- Inspect windshield and advise Sheriff of condition
- Inspect windshield wipers and change if needed (add cost of wipers)
- Inspect lights and replace bulbs as needed (add cost of lamp)
- Inspect emergency lights and replace bulbs as needed (Sheriff to provide specialized lamps)

# RESPONSES

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- A. PHIL LARSON, Chairperson,  
Fresno County Board of Supervisors  
R101 through R102
- B. MARGARET MIMS,  
Fresno County Sheriff  
R101
- C. JOHN NAVARRETTE,  
Fresno County Administrative Officer  
R101 through R102





# County of Fresno

BOARD OF SUPERVISORS  
SUPERVISOR PHIL LARSON – DISTRICT ONE  
CHAIRMAN

April 6, 2011

The Honorable Gary Hoff  
Presiding Judge, Superior Court  
1100 Van Ness Avenue  
Fresno, CA 93721

RE: RESPONSE TO THE 2010-11 GRAND JURY FINAL REPORTS #1 and #2

Dear Judge Hoff:

The Board of Supervisors and County Administrative Officer (CAO) have approved their official responses to the recommendations pertaining to Fresno County and the CAO contained in the 2010-11 Grand Jury Final Reports #1 and #2. The responses are submitted herewith in fulfillment of Penal Code Section 933(c).

On behalf of the Fresno County Board of Supervisors and the County Administrative Office, we would like to take this opportunity to thank the Grand Jury for their hard work and to assure them that Fresno County takes the concerns raised in these reports very seriously.

Sincerely,

Phil Larson, Chairman  
Board of Supervisors

Sincerely,

John Navarrette  
County Administrative Officer

Enclosure

**County of Fresno**  
**Board of Supervisors**  
**and**  
**County Administrative Officer**  
**RESPONSE TO THE**  
**2010-11**  
**FRESNO COUNTY GRAND JURY**  
**FINAL REPORT #1**





## FRESNO COUNTY SHERIFF'S OFFICE FLEET MAINTENANCE PROGRAM

Please find below the Fresno County Board of Supervisors' and County Administrative Officer's response to the 2010-11 Grand Jury Final Report #1.

### Findings

**F101: The FSO fleet management program ensures optimized vehicle life cycle and trade-in values.**

The Sheriff's fleet program was transferred from the County's General Services Division to the Sheriff's Office in 2003. As such, the County Administrative Officer does not have information regarding this finding and, therefore, defers to the Sheriff's response.

**F102: The FSO Take-Home Vehicle Program has proven effective and meets the original objectives of the program.**

The Sheriff's fleet program, including the take-home vehicle program, was transferred from the County's General Services Division to the Sheriff's Office in 2003. As a result, the County Administrative Officer does not have information regarding this finding and, for that reason, defers to the Sheriff's response.

**F103: The FSO endeavors to maintain its vehicles in a cost effective manner. However, new information for County Fleet Services will result in additional savings. (Addendum #1)**

The Board of Supervisors and County Administrative Officer are supportive and encouraging of departmental efforts to save costs. However, a current evaluation of FSO fleet costs versus County fleet services has not been completed. Therefore, the Board of Supervisors and County Administrative Officer cannot respond to this finding.

### Recommendations

**R101: Develop a Six Month Pilot Program to evaluate FSO vehicle "A" service maintenance (see list at end of report) and cost comparisons between County Fleet Services and outside contractors. If County Fleet Services is found to be more efficient and cost effective, a one-year contract should be implemented with an option for a second and third year. The grand jury concludes the pilot program will show a cost savings for the FSO vehicle maintenance program. (F103)**

With the Sheriff's concurrence, the Board of Supervisors and County Administrative Officer would direct County fleet services staff to work with Sheriff's staff to implement a pilot project to evaluate cost comparisons between County fleet services and outside contractors.

**R102: The County Fleet Service Manager should review the vehicle take-home policies of all Fresno County departments, ensuring compliance with County policies and procedures. (F102)**

The recommendation has been implemented. In June 2010 the revised Management Directive regarding Assignment of Vehicles was implemented. As required by this policy, Fleet Services conducts an annual review of residence-garaged vehicles. In addition, departments submit usage data quarterly to Fleet Services. It should be noted that the Sheriff's Department and District Attorney Investigators are exempt from these requirements pursuant to Memorandums of Understanding.



Margaret Mims  
Sheriff  
Fresno County Sheriff's Office

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April 4, 2011

Gary Hoff, Presiding Judge  
Fresno Superior Court  
1100 Van Ness Avenue  
Fresno, California 93724

RE: 2010-2011 FRESNO COUNTY GRAND JURY FINAL REPORT #1

Dear Judge Hoff:

This letter constitutes the response to the 2010-2011 Fresno County Grand Jury Report #1 pertaining to the Fresno County Sheriff's Office.

#### FINDINGS

F101            The FSO fleet management program ensures optimized vehicle life cycle and trade in values.

**Respondent agrees. The Sheriff's fleet operation was transferred from under the administration and management of the County's General Services Division to the Sheriff's Office in 2003. This also required the Sheriff to purchase some additional 2003 patrol vehicles to fully support the take-home vehicle program. Currently in 2011, many of these 2003 patrol vehicles are still in operation, even though some exceed mileages of 160,000 miles plus. This is based on the individual driver concept (take-home car program) that provides for clear vehicle accountability, the current maintenance/repair program administered and managed by the Sheriff's Fleet Operations, and the direct oversight of individual vehicle operations by Sheriff's supervisory staff. This has shown to far exceed any benefits of the previous "pool car" type operations for both life cycle replacement and serviceable use mileages. In the past, patrol vehicles were often cycled out of service within two to three years with sometimes 100,000 to 125,000 or less due to excessive maintenance/repair costs incurred in addition to their unreliability and liability as a Code 3 emergency response vehicle.**

F102            The FSO Take-Home Vehicle Program has proven effective and meets the original objectives of the program.

*Dedicated to Protect & Serve*

**Respondent agrees. The Sheriff's fleet operations were transferred under the administration and management of the Sheriff from the County's General Services Division in 2003. Many of the 2003 model year patrol vehicles purchases at the start of this program are still in operation, even though mileages are exceeding 160,000 plus with some vehicles that are currently 8 years old. In the past utilizing the "pool car" system, vehicles were typically unserviceable and retired as patrol vehicles within two to three years with mileages around 100,000 to 125,000 miles. Vehicles had to be taken out of service or replaced as they became unreliable and a liability as a Code 3 emergency response vehicle.**

**Additionally, the effective and efficient "productive time" of field personnel involved in the Take-Home Vehicle Program has increased dramatically from times past. At the current County calculated rate of \$108.16 per hour for deputy sheriff time, the efficient use of personnel having reliable vehicles is both mandatory for operational effectiveness as well as fiscal efficiency.**

F103 The FSO endeavors to maintain its vehicles in a cost effective manner. However new information for County Fleet Services will result in additional savings. (Addendum #1)

**Respondent partially disagrees. The Sheriff's Office continues in its efforts to maintain its vehicles in a cost effective and efficient manner. A number of contacts with the Fresno County General Services Fleet manager has resulted in the emergence of some issues that make part of this finding potentially inaccurate in regards to additional savings being realized by the Sheriff's Office. The inability of General Services fleet to provide free pickup and delivery of patrol vehicles to the Sheriff's basement has been identified due to lack of resources (i.e. staff). This in addition to the inability to ensure that working on Sheriff's vehicles that are of emergency first responder category will be the priority, is not acceptable. As noted in the response to Grand Jury Recommendation R101, the true cost savings is based on making deputy sheriff's productive time as effective as possible, not the cost of an oil change or "A" service.**

## RECOMMENDATIONS

R101 Develop a Six Month Pilot Program to evaluate FSO vehicle "A" service maintenance (see list at end of report) and cost comparisons between County Fleet Services and outside contractors. If County Fleet Services is found to be more efficient and cost effective, a one-year contract should be implemented with an option for a second and third year. The grand jury concludes the pilot program will show a cost savings for the FSO vehicle maintenance program. (F103)

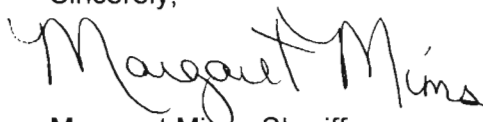
*Dedicated to Protect & Serve*

## RESPONSE

Recommendation will not be implemented at this time. The Sheriff's Office has initiated a number of contacts with General Services Fleet services regarding this recommendation, long before this review by the Grand Jury was begun or recently published. In fact General Services had an opportunity to bid on the current contract but did not do so. This was their opportunity to show they could be more efficient and cost effective. In the future the contract will be put out to bid and General Services will again have an opportunity to be competitive with outside vendors. It is part of the on-going effort by FSO Fleet Operations to minimize costs, increase efficiency and maximize productive officer time. GSA Fleet while their reported cost to provide an "A" service is minimally less than current service providers the Sheriff's Office utilizes, the TRUE cost savings is based on the MOST productive use of paid officer time, which is currently identified by the County on the Master Fee Schedule as \$108.16 per hour. GSA Fleet has communicated that it is unable to provide free pickup and delivery service of Sheriff's vehicles from and returned to the Sheriff's basement garage where vehicles are brought for service and repair and exchange for a "loaner vehicle". When asked if a measurable flat rate manual schedule was utilized for repair work, County Fleet advised that they operate on an "actual time model". This does not provide for an accurate way to attempt to minimize expenses through competitive cost comparisons.

Additionally, GSA Fleet can only commit to making service and repair of Sheriff's vehicles "typically" a priority, with no guarantee or measurable time parameters as is provided for by other vendors. Since productive officer time is the most important criteria, the use of GSA Fleet as another vendor for the Sheriff's Office for normal maintenance issues cannot be considered at this time.

Sincerely,

A handwritten signature in cursive script that reads "Margaret Mims".

Margaret Mims, Sheriff

*Dedicated to Protect & Serve*

# **REPORT #2**

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## **THE DISTRICT ATTORNEY'S INDEPENDENT REVIEW OF OFFICER INVOLVED SHOOTINGS IN THE COUNTY OF FRESNO**



**FILED**

FEB 02 2011

FRESNO COUNTY SUPERIOR COURT

By \_\_\_\_\_ DEPUTY

**2010-2011  
FRESNO COUNTY GRAND JURY**



**FINAL REPORT  
#2**

**Fresno County  
2010 – 2011 Grand Jury  
Report # 2**

**The District Attorney's Independent Review of Officer- Involved  
Shootings in the County of Fresno**

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## **INTRODUCTION**

The grand jury received citizen complaints regarding the Fresno County District Attorney's Office (DA) decision to cease independent investigations of officer-involved shootings (OIS) within the county.

## **BACKGROUND**

Since 1984, when an investigational protocol was created for OIS cases, the public has been well served by the District Attorney's office performing investigations separate from the involved law enforcement agency. Fresno County law enforcement agencies depended on the DA's OIS investigation to independently verify the incident's specifics and review the collected documentation, thereby maintaining the public's confidence in the accuracy and independence of the OIS review process.

On February 25, 2010, the District Attorney notified the Fresno Police Department (FPD) that the DA's office would cease the current policy of participation in the investigation and review of Fresno Police Officer OIS and in-custody death (ICD) incidents. The DA cited, as justification for the action taken, the loss of funding and personnel over several years causing the redeployment of resources to prosecutions. The DA's office would continue involvement in cases of specific agency referral for which criminal conduct is alleged. Subsequently, a similar notification was given to all other law enforcement agencies in the county. These notifications further altered the 1984 protocol, which was previously modified in 2009, when the DA ceased reviewing OIS incidents when no person was injured or killed.

During 2009 and 2010, FPD had twenty-three OIS incidents, the majority of all such incidents within the county. Other cases involved the Fresno County Sheriff's Office (FSO) and other jurisdictions within Fresno County. Historically FPD relied on, and preferred, the DA's office conducting independent investigations as a final review of these incidents.

## **PURPOSE OF THE INVESTIGATION**

- Evaluate the assertion that the District Attorney's involvement in these incidents provides a unique and valuable service to Fresno County.
- Verify facts relating to the justification used by the DA to discontinue the existing policy of participation in OIS and ICD incidents.
- Educate the community on the issues raised by the policy change, the alleged effects upon the community and provide possible remedies.



## **DISCUSSION**

Prior to February and March 2010 notifications ceasing the current policy of investigation and review, the DA's office maintained an OIS/ICD team of two incident investigators, a coordinating senior investigator, and a Deputy District Attorney. The unit was on call 24 hours a day, 7 days a week, for involvement where an injury or death occurred. OIS/ICD incidents typically involved the team working overtime, after normal business hours, which is an addition to normally mandated duty functions.

When an incident occurred, the team responded upon notification by the involved law enforcement agency, to the shooting scene, was briefed by the involved agency's OIS investigators, evaluated the incident's physical layout, and observed the physical evidence. Subsequently the team would monitor interviews of all participants and witnesses. If the incident resulted in a fatality, the DA's investigator attended the autopsy and briefed the attending pathologist.

The involved agency assembled a complete packet of incident reports, often involving multiple county departments and State and Federal agencies. The packet was submitted to the DA's office for legal review. An ultimate findings letter was prepared by the District Attorney, making a legal determination that the officer had legal, and reasonable grounds under California law to use deadly force, or not. Thus, closure was provided to the officer(s) involved, their agency and all families involved in the incident.

The grand jury received testimony relating to severe budget constraints placed upon multiple Fresno County departments involved in the grand jury investigation. The DA's office was unable to provide specific costs for services provided under the terminated protocol. Testimony also revealed significant procedural issues in several departments or state agencies which resulted in a protracted period between the OIS/ICD incident and the ultimate DA findings letter.

The grand jury received documentation revealing a substantial reduction in cases awaiting the DA's ultimate findings letter. Completion of cases generally exceeds one year, the result of the cumulative effect of the processes in place, and the number of reporting agencies involved.

Testimony from multiple witnesses clarified the dissimilar capabilities and responsibilities of the Office of Independent Review (OIR), within the Fresno City Manager's office, and the DA regarding OIS incidents. In a typical year, most OIS cases involve FPD. Therefore, popular conjecture was the OIR could supplant the DA in the investigation and review of the FPD cases and provide similar incident closure to the DA's findings letter. Evidence received by the grand jury revealed this thesis is untrue: (1) the OIR is without independent investigative authority; and (2) the OIR cannot issue a findings letter concerning the legality of the use of force.

## **CONCLUSION**

The Fresno County District Attorney concluded her office could no longer provide for OIS services under the current protocol. The decision was justified by the DA as the result of many years of declining funding for her department, which caused substantial reduction in personnel. Thus she was redeploying her staff to prosecutorial efforts, which is deemed more important than OIS investigations, given limited fiscal resources.

Testimony was given by county, city, and law enforcement officials that the District Attorney's office should resume investigating and reviewing OIS/ICD incidents.

The District Attorney offered to restart OIS investigations when the DA's office is adequately funded, allowing for vigorous prosecutions, while giving the technical excellence required of OIS investigations and reports.

## **FINDINGS**

- F201 Due to loss of fiscal resources, the Fresno County District Attorney's office ceased investigation and review of OIS/ICD incidents.
- F202 The District Attorney's office did not provide specific costs relating to OIS/ICD incident investigations and review.
- F203 The preponderance of evidence supports the District Attorney's Office resuming their function of investigating and reviewing OIS/ICD incidents.
- F204 The Office of Independent Review is not a substitute for the DA's office. OIR was created to review, not independently investigate OIS/ICD incidents.
- F205 Investigation of OIS/ICD incidents by the Fresno County District Attorney's Office is valuable to the community.
- F206 Since the spring of 2010, the Fresno County District Attorney's Office closed a number OIS/ICD cases by issuing the required findings letter. This substantially reduced the number of pending incomplete cases.

## **RECOMMENDATIONS**

The 2010-2011 Fresno County Grand Jury recommends that the following be implemented:

- R 201 The District Attorney's office should resume investigating and reviewing OIS/ICD incidents. (F201, F203, F205, and F206)
- R 202 The Board of Supervisors should appoint a task force whose mission is to create a streamlined and cost-efficient process, allowing the District Attorney's office to provide an ultimate findings letter for OIS/ICD cases. (F201-F205)
- R203 The task force should include city and county leadership and representatives from the community. (F201-F205)
- R204 All open OIS/ICD cases should be completed expeditiously. (F206)

## **REQUEST FOR RESPONDENTS**

Pursuant to Penal Code §933.05, the Fresno County Grand Jury requests responses to each of the specific findings and recommendations. It is required that responses from elected officials are due within 60 days of the receipt of this report and 90 days for others.

## RESPONDENTS

- Lee Brand, President, Fresno City Council (R202 & R203)
- Jerry Dyer, Chief - Fresno Police Department (R201-R204)
- Elizabeth Egan, Fresno County District Attorney (R201-R204)
- Phil Larson, Chairman, Fresno County Board of Supervisors (R201-R203)
- Margaret Mims, Fresno County Sheriff (R202 & R203)
- John Navarette, Fresno County Administrative Officer (R201-R203)
- Mark Scott, Fresno City Manager (R201-R203)

## **SOURCES AND REFERENCES**

- Interviews of the Complainant and representatives from:
  - City of Fresno Police Department
  - City of Fresno Mayor's Office
  - Fresno City Council
  - Fresno County Board of Supervisors
  - Fresno County Coroner's Office
  - Fresno County District Attorney's Office
  - Fresno County Sheriff's Office
  - Fresno Police Officer Association
- Letter from Elizabeth Egan, Fresno County District Attorney to Chief Jerry Dyer, Fresno Police Department dated February 25, 2010
- O.I.S. Investigation Protocol, Fresno County Police Chiefs Association, September 4, 1984

# RESPONSES

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- A. LEE BRAND, President  
Fresno City Council  
R202 through R203  
Not received by publication date
- B. JERRY DYER, Chief of Police,  
Fresno Police Department  
R201 through R204
- C. ELIZABETH EGAN,  
Fresno County District Attorney  
R201 through R204
- D. PHIL LARSON, Chairperson,  
Fresno County Board of Supervisors  
R201 through R203
- E. MARGARET MIMS,  
Fresno County Sheriff  
R202 through R203
- F. JOHN NAVARRETTE,  
Fresno County Administrative Officer  
R201 through R203
- G. MARK SCOTT,  
Fresno City Manager  
R201 through R203





Mariposa Mall  
P.O. Box 1271  
Fresno, CA 93715-1271

Police Department

Jerry P. Dyer  
Chief of Police



February 4, 2011

Rod H. Coburn, D.D.S.,  
Fresno County Grand Jury Foreperson  
1100 Van Ness Avenue  
Fresno, CA 93724-0002

Dear Mr. Coburn:

The issue of the District Attorney's Office investigating and reviewing Officer Involved Shooting (OIS) and In Custody Death (ICD) incidents has been of great concern to me as a Police Chief. I have always held that the independent investigation of these incidents increases public trust in our agency. Although I am very sympathetic to the District Attorney's fiscal constraints, I continue to be opposed to their decision to cease the investigation and review of those incidents.

I whole-heartedly concur and support R 201, "The District Attorney's office should resume investigation and reviewing OIS/ICD incidents."

I support any effort to streamline this process and support R 202, "The Board of Supervisors should appoint a task force whose mission is to create a streamlined and cost-efficient process, allowing the District Attorney's office to provide an ultimate findings letter for OIS/ICD cases."

I support R 203, "The task force should include city and county leadership and representatives from the community." I would also request that the Fresno Police Department be a member of that task force.

I support R 204, "All open OIS/ICD cases should be completed expeditiously." I have assigned one detective to this task as one of their primary duties. The Fresno Police Department will continue to pursue these cases expeditiously, within our fiscal restraints.

I want to thank the Fresno County Grand Jury for their investigation of this issue, as I believe it is crucial to maintaining the trust that our community places in law enforcement.

Sincerely,

Jerry P. Dyer  
Chief of Police

JD/dg



County of Fresno  
**Office of the District Attorney**  
Elizabeth A. Egan, District Attorney

March 30, 2011

The Honorable Gary Hoff  
Presiding Judge  
Fresno County Superior Court  
1100 Van Ness Avenue  
Fresno, CA 93721

RE: Response to the 2010-2011 Grand Jury Final Report #2:  
*The District Attorney's Independent Review of Officer-Involved Shootings  
in the County of Fresno*

Dear Judge Hoff:

The Grand Jury's report reflects findings and recommendations regarding the decision by the District Attorney's Office to discontinue the investigation of Officer Involved Shootings (OIS) and In Custody Deaths (ICD) in Fresno County. As per the legal requirements to respond under Penal Code Section 933, I am submitting this response to the findings and recommendations pertaining to matters within the control of the District Attorney's Office (DA's Office).

We appreciate the dedicated effort of the Grand Jury to delve into this very complex issue involving all the law enforcement agencies within the County. The DA's Office has continuously expressed the importance of having the resources to provide experienced select prosecutors and investigators to conduct OIS and ICD investigations.

Findings:

**The Fresno County District Attorney agrees with Finding F201.**

*Due to the loss of fiscal resources, the Fresno County District Attorney's Office ceased investigation and review of OIS/ICD incidents.*

Since Fiscal Year (FY) 2007-08 to present, the DA's Office has lost 77 positions for a 26% decrease in staffing. During this time period, the DA's Office lost 28% of its attorneys and 31% of its investigators. The proposed budget for FY 2011-

12, if adopted, would result in an additional loss of 40 positions for a total loss of 117 positions or a 39% reduction in staff in four fiscal years.

Due to these budget cuts, the DA's Office was forced to review and redeploy its resources to effectively prosecute criminal cases in court. The rapid loss of staffing, especially in attorneys and investigators, necessitated that the DA's Office cease the investigation and review of OIS/ICD incidents throughout Fresno County.

**The Fresno County District Attorney agrees in part with Finding F202.**

*The District Attorney's Office did not provide specific costs relating to the OIS/ICD incident investigations and review.*

In September 2010, the Grand Jury requested information regarding specific costs associated with OIS and ICD incident investigations and review. The decision by the DA's Office to cease the investigations of OIS and ICD was relatively recent and cuts to staffing made any in-depth, labor intensive analysis and specific monetary costs difficult to provide. Prior to the request from the Grand Jury, the DA's Office had not tracked OIS and ICD costs as a separate budget item. However, the Grand Jury was told that the DA's Office is required to pay the costs of overtime to investigators and provide three days of compensatory time off to prosecutors who respond to OIS and ICD investigations during non-working hours.

The Grand Jury was also told that time spent by attorneys and investigators working on OIS and ICD investigations meant they could not work on preparing criminal cases for prosecution in court. The budget cuts to attorney and investigative staff have meant increasing caseloads. The time spent on OIS and ICD investigations is a specific cost to the productivity and the effectiveness of attorney and investigative staff that could be used working on the core functions of the DA's Office. The resources previously utilized for these investigations are now focused on pending homicide, gang, and sexual assault prosecutions.

**The Fresno County District Attorney disagrees with Finding F203.**

*The preponderance of evidence supports the District Attorney's Office resuming their function of investigating and reviewing OIS/ICD incidents.*

In the absence of additional resources, the DA's Office cannot resume the investigation of OIS and ICD incidents. If the 23.8% recommended budget reduction in FY 2011-12 is implemented on top of the 16.3% reduction in FY 2010-11, there will be more layoffs and loss of positions. The DA's Office will not be able to absorb additional overtime costs or shift staff resources from pending criminal prosecutions to the thorough investigation of OIS and ICD incidents.

**The Fresno County District Attorney agrees with Finding F204.**

*The Office of Independent Review is not a substitute for the DA's Office. OIR was created to review, not independently investigate OIS/ICD incidents.*

According to the Grand Jury Report, the Office of Independent Review (OIR) does not have independent investigative authority nor can it issue a findings letter concerning the criminal liability of the use of force. With adequate resources, the DA's Office can independently and thoroughly investigate OIS and ICD incidents and issue a determination regarding criminal liability.

OIR serves only the City of Fresno. It does not review OIS/ICD cases for the entire County, which includes the Sheriff's Office and 14 separate police departments. This is an additional reason OIR is not a substitute for the DA's Office.

**The Fresno County District Attorney agrees with Finding F205.**

*Investigation of OIS/ICD incidents by the Fresno County District Attorney's Office is valuable to the community.*

The independent, thorough investigation of OIS and ICD incidents by the DA's Office is valuable to the community. The resources needed to perform this function should be restored to the DA's Office.

The DA's Office also provides many other valuable services to the community. These other services are severely impacted by loss of staff due to budget cuts. The DA's Office must dedicate the resources it does have available to aggressively prosecute those who violate the law.

**The Fresno County District Attorney agrees with Finding F206.**

*Since the spring of 2010, the Fresno County District Attorney's Office closed a number of OIS/ICD cases by issuing the required findings letter. This substantially reduced the number of pending incomplete cases.*

The DA's Office is committed to closing the remaining OIS and ICD cases it has independently and thoroughly investigated through March 2010 by issuing the findings letters.

**Recommendations:**

*R201: The District Attorney's Office should resume investigating and reviewing OIS/ICD incidents. (F201, F203, F205 and F206)*

R201 will be implemented when sufficient resources are restored.

The inability to conduct autonomous OIS and ICD investigations is not an optimal situation and will be reinstated once staffing increases. The DA's Office looks forward to being able to independently investigate all OIS and ICD incidents as soon as our staffing permits.

In OIS and ICD investigations, a significant amount of work is required by the DA's Office. A prosecutor and an investigator respond to the scene of an OIS or ICD. Sometimes, in the case of an OIS, there are multiple officers who have discharged their weapons and multiple scenes requiring more than one



investigator and attorney to respond. Interviews of all the officers who discharged their weapons, police officer witnesses, and citizen witnesses are scheduled and conducted at different venues simultaneously including at the hospital. Staff of the DA's Office must be present and observe any search warrant execution. They identify and conduct any follow up investigation deemed necessary by the DA's Office.

Following an OIS or an ICD, reports are tracked by the investigative staff and legal research is conducted by the deputy district attorney. Sometimes, preparation for testimony including depositions may be conducted for federal trial and testimony may be given.

The effort previously allotted to the thorough investigation of OIS and ICD and the accurate reporting of the incidents has been shifted to the prosecution of pending criminal cases including homicides, gang and sexual assault cases.

*R202: The Board of Supervisors should appoint a task force whose mission is to create a streamlined and cost-efficient process, allowing the District Attorney's Office to provide an ultimate findings letter for the OIS/ICD cases. (F201-205)*

R202 should not be implemented.

OIS and ICD investigations by the DA's Office cannot be streamlined or done in a more cost-effective process while retaining their independence and thoroughness. These investigations are complex, labor intensive investigations conducted by experienced and well-trained law enforcement professionals which produce a legal determination of the lawfulness of the incident. A streamlined, cost-effective process is essentially only a review of OIS/ICD incidents—not an independent investigation. Such a process by the DA's Office would not be of value to the community.

In order for the DA's Office to resume the investigation of OIS and ICD, the proper resources must be in place. At this time, the DA's Office continues to receive approximately 45,000 to 50,000 cases for prosecutorial review a year. Our staff has declined from 300 in FY 2007-08 to our current staff of 223 in FY 2010-11—a 26% reduction. In the last three years, we have lost 39 prosecutors and 20 investigators.

In order to reallocate staff to these investigations, the DA's Office needs to recover the nineteen (19) deputy district attorneys and six (6) investigators lost during the FY 2010-11 budget process with funding of approximately \$3.5 million. With the County Administrative Office's (CAO) Recommended Budget for FY 2011-12, the DA's Office is again facing possible layoffs. These budget cuts will force the DA's Office to continue to refrain from investigating and reviewing OIS and ICD incidents solely due to a lack of resources.

It is imperative to convey that the DA's Office is at a tipping point where difficult decisions must be made to redeploy resources. With continued projected cuts to

the DA's Office, ceasing OIS and ICD investigations is just the first of many hard choices the DA's Office will be forced to make. The CAO and Board of Supervisors must remain steadfast in their commitment to ensure the prioritization of resources to public safety.

The task force will be unnecessary if the funding is reallocated to the DA's Office restoring the eliminated staff.

*R203: The task force should include city and county leadership and representatives from the community. (F201-F205)*

R203 should not be implemented.

The task force will be unnecessary if the funding is reallocated to the DA's Office restoring the eliminated staff.

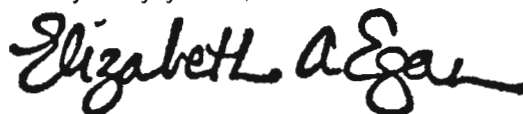
*R204: All open OIS/ICD cases should be completed expeditiously. (F206)*

R204 will be implemented.

The DA's Office has committed to completing all open OIS and ICD investigations. The OIS and ICD review and completion of findings letters will be done in as expeditious a manner as possible given the loss in staffing. The DA's Office is cognizant the public, the law enforcement agencies, and the individual officers are waiting for the completed investigation and review. Therefore, we anticipate the DA's Office will complete the open OIS/ICD cases before the end of the year.

This concludes my comments on the findings and recommendations of the Grand Jury Report #2 for the year 2010-2011.

Very truly yours,



Elizabeth A. Egan  
Fresno County District Attorney

cc: Board of Supervisors  
John Navarrette, County Administrative Officer



# County of Fresno

BOARD OF SUPERVISORS  
SUPERVISOR PHIL LARSON – DISTRICT ONE  
CHAIRMAN

April 6, 2011

The Honorable Gary Hoff  
Presiding Judge, Superior Court  
1100 Van Ness Avenue  
Fresno, CA 93721

RE: RESPONSE TO THE 2010-11 GRAND JURY FINAL REPORTS #1 and #2

Dear Judge Hoff:

The Board of Supervisors and County Administrative Officer (CAO) have approved their official responses to the recommendations pertaining to Fresno County and the CAO contained in the 2010-11 Grand Jury Final Reports #1 and #2. The responses are submitted herewith in fulfillment of Penal Code Section 933(c).

On behalf of the Fresno County Board of Supervisors and the County Administrative Office, we would like to take this opportunity to thank the Grand Jury for their hard work and to assure them that Fresno County takes the concerns raised in these reports very seriously.

Sincerely,

Phil Larson, Chairman  
Board of Supervisors

Sincerely,

John Navarrette  
County Administrative Officer

Enclosure

**County of Fresno**  
**Board of Supervisors**  
**and**  
**County Administrative Officer**  
**RESPONSE TO THE**  
**2010-11**  
**FRESNO COUNTY GRAND JURY**  
**FINAL REPORT #2**



**THE DISTRICT ATTORNEY'S INDEPENDENT REVIEW OF OFFICER-INVOLVED SHOOTINGS  
IN THE COUNTY OF FRESNO**

Please find below the Fresno County Board of Supervisors' and County Administrative Officer's response to the 2010-11 Grand Jury Final Report #2.

**Recommendations**

**R201: The District Attorney's office should resume investigating and reviewing OIS/ICD incidents. (F201, F203, F205, and F206)**

**R202: The Board of Supervisors should appoint a task force whose mission is to create a streamlined and cost-efficient process, allowing the District Attorney's office to provide an ultimate findings letter for OIS/ICD cases. (F201-F205)**

**R203: The task force should include city and county leadership and representatives from the community. (F201-F205)**

Response to R201, R202 and R203: As the District Attorney is the elected chief prosecutor of Fresno County, the Board of Supervisors and County Administrative Officer support her prioritization of the department's resources. Therefore the Board of Supervisors and County Administrative Officer defer to the District Attorney's responses to these recommendations.



Margaret Mims  
Sheriff  
Fresno County Sheriff's Office

April 1, 2011

Gary Hoff, Presiding Judge  
Fresno Superior Court  
1100 Van Ness Avenue  
Fresno, California 93724

RE: GRAND JURY FY 10-11 FINAL REPORT #2  
THE DISTRICT ATTORNEY'S INDEPENDENT REVIEW OF OFFICER-INVOLVED  
SHOOTINGS IN THE COUNTY OF FRESNO

Dear Judge Hoff:

This letter constitutes the response to the Grand Jury FY 10-11 Final Report #2 pertaining to the Fresno County Sheriff's Office. The District Attorney's Independent Review of Officer-Involved shootings in the County of Fresno.

RECOMMENDATIONS

R202 The Board of Supervisors should appoint a task force whose mission is to create a streamlined and cost-efficient process, allowing the District Attorney's office to provide an ultimate findings letter for OIS/ICD cases. (F201-F205)

**I defer to the constitutionally elected District Attorney to decide if a task force is to be created. If asked to serve and participate on such a task force by the District Attorney I would accept the invitation.**

R203 The task force should include city and county leadership and representatives from the community. (F201-F205)

**I defer to the constitutionally elected District Attorney to decide if a task force is to be created. If asked to serve and participate on such a task force by the District Attorney I would accept the invitation.**

Sincerely,

Margaret Mims, Sheriff

*Dedicated to Protect & Serve*



**Mark Scott**  
City Manager

March 10, 2011

Mr. Rod H. Coburn, D.D.S.  
Fresno County Grand Jury  
1100 Van Ness Ave  
Fresno, CA 93724-0002

Dear Mr. Coburn:

Thank you for the Grand Jury's report and recommendations concerning investigations of officer involved shootings. Per your request, I am responding to recommendations 201-203.

Recommendation 201 – I wholeheartedly agree that the District Attorney's Office needs to resume investigations and review of Officer Involved Shooting/In Custody Death cases. We all understand and relate to the District Attorney's budget concerns, but this would seem to be one of the more central, core needs within a local community – i.e., the investigation of the proper use of police powers and potential deadly force.

Recommendation 202 – Whether the Board of Supervisors or District Attorney's Office, we endorse any effort to accomplish the purpose cited in your report.

Recommendation 203 – The City would be very willing to participate on a task force appointed by the Board of Supervisors to enable resumption of the service.

Thank you for the Grand Jury's efforts on this matter. We are eager to follow through on any effort to reestablish this function.

Sincerely,

Mark Scott  
City Manager

# **REPORT #3**

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## **PLEASANT VALLEY STATE PRISON REVIEW OF THE CDC 602 PRISONER COMPLAINT PROCESS**





**FILED**

FEB 08 2011

FRESNO COUNTY SUPERIOR COURT

By \_\_\_\_\_ DEPUTY

**2010-2011  
FRESNO COUNTY GRAND JURY**



**FINAL REPORT  
#3**

**Fresno County  
2010-2011 Grand Jury  
Report #3**

**Pleasant Valley State Prison –  
Review of the CDC 602 Prisoner Complaint Process**

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*"The grand jury shall inquire into the condition and management of the public prisons within the county." Section 919, subdivision (b), of the California Penal Code.*

## **INTRODUCTION**

The Fresno County Grand Jury conducted its annual review of the Pleasant Valley State Prison (PVSP). The grand jury visited PVSP on September 16 and October 27, 2010. On both occasions the grand jury was welcomed and provided with a facility assessment by the warden and the prison staff.

## **BACKGROUND**

PVSP, located at 24863 West Jayne Avenue, Coalinga, California, is the only state prison in Fresno County. This institution opened in November 1994 and covers 640 acres. According to their website, as of fiscal year 2010-2011, the prison has an operating budget of \$195 million, employs 1,388 custody and support staff, and houses 5,188 prisoners in a facility designed to house 2,616 prisoners. These demographics are unchanged from those cited in the 2007-2008 Fresno Grand Jury Report #4.

The most recent grand jury reports have focused on medical and dental health issues at PVSP. The 2007-2008 grand jury report #4 also evaluated the issue of inmate complaints referred to as the CDC 602 process. It should also be noted, recommendations of 2009-2010 grand jury Report #2 regarding dental health issues were implemented.

## **PURPOSE OF THE INVESTIGATION**

- Reevaluate the findings and recommendations of previous grand jury reviews of PVSP.
- Evaluate the policies and procedures for inmate complaints.
- Evaluate PVSP's compliance with the CDC 602 process.

## **DISCUSSION**

### **Overview**

Previous Fresno County Grand Juries evaluated health related issues at PVSP. In *Plata v. Schwarzenegger*, the State of California's adult prison medical care was deemed unconstitutional. In 2006, after failing to make court-ordered corrections, the prison medical system was placed in a court ordered Receivership. The Receiver is the executive manager of medical care in California state prisons. Thus the Secretary of California Department of Corrections and Rehabilitation [CDCR] no longer has jurisdiction over medical care services.

As a result of additional lawsuits, mental health, dental services and issues of the rights of disabled inmates are presided over by a Special Master and two U.S. District Court Judges.

### **Prisoner Complaints**

Since previous grand jury health-related recommendations now lies beyond the administration of CDCR, this grand jury chose to focus on the inmate appeal process within PVSP. Between July 1 and December 31, 2010, this grand jury received numerous complaints (28) from PVSP inmates. In addition to reviewing the prisoner's complaints, this grand jury investigated PVSP's compliance with the CDC 602 process. The California Code of Regulations, Title 15, updated through October 15, 2009, contains the process for California prison administrative appeals by inmates.

### **CDC 602 Process**

Each inmate receives a Pleasant Valley Prison Inmate Orientation Handbook, which includes all necessary steps to complete the CDC 602 process. Prison administrative appeals are the internal grievance process through which prisoners, and in some situations non-prisoners, may file a complaint against prison personnel to challenge a prison policy or practice. The complaints are generally regarding conditions of confinement and disciplinary actions and redress appeal procedures are subject to Title 15, Section 8, utilizing CDC Form 602.

The regulations specify the actions and time frames that apply at each step of the process. All inmates have the right to appeal any decision, action, condition, policy, or regulation of the Department that adversely affects them. Inmates dissatisfied with an administrative response may seek relief outside the prison system by filing a lawsuit with the courts.

The forms are available in all Housing Units. Another inmate, staff member, family member or attorney may assist the inmate in completing the appeal form at each step. However, the inmate must sign, date and submit the document at each step in the process. Each year PVSP processes over 10,400 complaints. Approximately one half of the complaints are medical and settled by the federal receivership if not resolved through the CDC 602 process.

Complaints are filed on an Inmate/Parolee Appeal Form (CDC 602) and may be addressed informally and formally. This process has multiple levels of review. Before an appeal is accepted for formal processing, the inmate is required to attempt to solve the problem informally with the appropriate staff member within fifteen days of the incident. The staff member completes the informal response within five working days of the date presented.

If the inmate is not satisfied with the outcome of the informal process, he has fifteen days to appeal. He must send all supporting documents to the Appeals Coordinator for a formal review. Appeal forms are routed through the prison mail to the Appeals Coordinator within PVSP. The response must be completed within thirty working days.

If the inmate remains unsatisfied following the response, the inmate may proceed to the next step. The complaint is forwarded to the warden for consideration within fifteen days. The response must be completed within twenty working days.

#### **Final Step in the Appeals Process**

Decisions of the Departmental Review Board, which serve as the director's level decision, are not appealable and conclude the inmate's departmental appeal remedy. The Director's response must be filed within sixty working days. The entire CDC 602 process may take up to 160 days for completion. If the inmate is dissatisfied with the Director's decision, the prisoner may file a lawsuit.

#### **Summary of Timeline**

Informal Process (5 working days) (15 days to appeal) Formal Process appeal goes to a PVSP on-site Appeals Coordinator (30 working days) (15 days to appeal) Warden (20 working days) (15 days to appeal) Director of Corrections (60 working days) Inmates dissatisfied with the final result may seek further action via lawsuit.
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#### **Review of Complaints**

In most cases, complaints received by the grand jury, indicate inmates have not completed the entire 602 appeals process within the CDCR system. This grand jury is civil in nature and any action taken by the grand jury narrowly focuses on the compliance with established policy and procedures contained in Title 15.

In an endeavor to evaluate PVSP's processing of inmate complaints relative to Title 15 requirements, this grand jury conducted a random review of inmate complaints.

On October 27, 2010 a grand jury committee visited PVSP to evaluate the CDC 602 process. The committee met with key staff members. They provided the committee with a detailed accounting of the CDC 602 process from inception of the complaint through

completion. We were advised CDC 602 complaints are divided into two areas – medical and non medical. Each division had their own staff assigned to process the complaints.

We toured the facility including the Administrative Office where we reviewed randomly selected CDC 602 complaints. The complaints reviewed ranged from in-progress, rejected and/or completed. The CDC 602 complaints must be held in a secured facility for four years from the date of the complaint. We reviewed the inmate yards where we observed secured CDC complaint drop boxes, which are consistent with the information provided in the inmate Orientation Handbook.

## **CONCLUSION**

The grand jury reviewed the CDC 602 process at PVSP, which is required by California Code of Regulations, Title 15. PVSP is in compliance with the California Code of Regulations, Title 15.

Upon completion of non-medical CDC 602 complaints, an inmate may request the grand jury to review their completed complaint. This request must include all relevant documents or the inmate's request will receive no action by the grand jury.

## **FINDINGS**

- F301 California Code of Regulations, Title 15, Article 8 provides the processes for administrative appeals of internal grievances.
- F302 Complaints received by the Fresno County Grand Jury seldom have completed the Title 15, Article 8 grievance process, and the request is returned for resubmission once the CDC 602 process is completed.
- F303 PVSP provides adequate resources for inmates to initiate and complete the grievance process.
- F304 As evaluated by the grand jury, PVSP is in compliance with the processes and timelines in Title 15, Section 8.
- F305 The large volume of prisoner complaints creates excessive work on the administrative staff.
- F306 Inmates are provided, upon arrival at PVSP, an orientation handbook, which includes the grievance procedure. Inmates have sufficient resources available to them to file an administrative grievance and to track its progress and decisions.
- F307 Completed CDC 602 complaints are stored in an unsecured area.

## RECOMMENDATION

R301 PVSP must provide a secure storage for the completed CDC 602 complaint forms for the required four years as stated in Title 15. (F307)

## REQUEST FOR RESPONSES

Pursuant to Penal Code §933.05, the Fresno County Grand Jury requests responses to each of the specific findings and recommendations. It is required that responses from elected officials are due within 60 days of the receipt of this report and 90 days for all others.

### RESPONDENTS

Matthew Cate, Secretary, California Department of Corrections and Rehabilitation (R301)  
James A. Yates, Warden, Pleasant Valley State Prison (R301)

## SOURCES AND REFERENCES

- 2007-2008 Fresno County Grand Jury Report #4
- 2009-2010 Fresno County Grand Jury Report #2
- California Penal Code
- California Prison Focus
- Interviews with PVSP administrative staff
- Pleasant Valley State Prison Inmate Orientation Handbook
- Pleasant Valley State Prison web site
- Reviewed relevant PVSP documents
- State of California, California Code of Regulations, Title 15. Crime Prevention and Corrections, updated through October 15, 2009

# RESPONSES

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A. MATTHEW CATE, Secretary,  
California Department of Corrections  
and Rehabilitation

R301

B. JAMES A. YATES,  
Pleasant Valley State Prison

R301

Response received from Robert Trimble, Warden



**OFFICE OF THE SECRETARY**

P. O. Box 942883  
Sacramento, CA 94283-0001



August 11, 2011

The Honorable Gary D. Hoff  
Presiding Judge  
Fresno County Superior Court  
1100 Van Ness Avenue  
Fresno, California 93724-0002

Dear Judge Hoff:

This letter is being submitted in response to the Fresno County Grand Jury's report on its review of the Inmate Appeals Process at Pleasant Valley State Prison. On behalf of the California Department of Corrections and Rehabilitation (CDCR), I thank the representatives of the Fresno County Grand Jury for the opportunity to respond to your findings and recommendations; a response to each is enclosed herein.

We would like to thank the Fresno County Grand Jury for their professionalism and personal interest in CDCR's efforts to improve operations.

If you have any questions or concerns, please call my office at (916) 323-6001.

Sincerely,



MATTHEW L. CATE  
Secretary

Enclosure

cc: Scott Kernan, Undersecretary (A), Operations  
Terri McDonald, Director (A), Division of Adult Institutions  
George J. Giurbino, Deputy Director (A), Facility Operations, Division of Adult Institutions



**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION  
 RESPONSE TO THE FRESNO COUNTY GRAND JURY  
 REVIEW OF THE INMATE APPEALS PROCESS AT  
 PLEASANT VALLEY STATE PRISON**

ITEM #	Findings	Recommendations	Action taken/ Proposed plan	COMPLETION DATE	COMMENTS/ STATUS
<b>F301</b>	"California Code of Regulations (CCR), Title 15, Article 8, provides the processes for administrative appeals of internal grievances."	No recommendation made.	CDCR agrees with the findings.	N/A	N/A
<b>F302</b>	"Complaints received by the Fresno County Grand Jury seldom have completed the Title 15, Article 8, grievance process, and the request is returned for resubmission once the CDCR Form 602, Inmate/Parolee Appeal, process is completed."	No recommendation made.	CDCR agrees with the findings.	N/A	N/A
<b>F303</b>	"PVSP provides adequate resources for inmates to initiate and complete the grievance process."	No recommendation made.	CDCR agrees with the findings.	N/A	N/A
<b>F304</b>	"As evaluated by the Grand Jury, PVSP is in compliance with the processes and timelines in the Title 15, Section 8."	No recommendation made.	CDCR agrees with the findings	N/A	N/A
<b>F305</b>	"The large volume of prisoner complaints creates excessive work on the administrative staff."	No recommendation made.	CDCR agrees with the findings.	N/A	N/A
<b>F306</b>	"Upon arrival at PVSP, inmates are provided an orientation handbook, which includes the grievance procedure. Inmates have sufficient resources available to them to file an administrative grievance and to track its progress and	No recommendation made	CDCR agrees with the findings.	N/A	N/A

	<p>decisions.”</p>	<p>“PVSP must provide a secure storage for the completed CDCR Form 602 complaints for the required four years as stated in Title 15.”</p>	<p>CDCR agrees with the Grand Jury’s findings and the recommendation. PVSP’s Appeals Department has a secured conex box located outside of the secured perimeter of the prison. The conex is currently backlogged with appeals needing to be purged. PVSP is actively seeking a contract to have the outdated appeals shredded to create much needed space. In lieu of this, the appeals maintained in the overflow room have been moved into a secured office with access only to appeals staff.</p>	<p>On-going</p>	<p>As a result of the States current fiscal crisis, all monies spent must be prioritized. With that in mind, PVSP has been slowly purging the outdated appeals in the conex with resources available at the Prison. PVSP will continue this process until such time it is fiscally responsible to seek a contract with an outside vendor.</p>
<p><b>F307</b></p>	<p>“Completed CDCR 602 Form complaints are stored in an unsecured area.”</p>				

## DIVISION OF ADULT INSTITUTIONS

**Pleasant Valley State Prison**

P.O. Box 8500  
Coalinga, CA 93210



February 23, 2011

The Honorable Gary D. Hoff  
Presiding Judge  
Fresno County Superior Court  
1100 Van Ness Avenue  
Fresno, California 93724-0002

Dear Judge Hoff:

**RESPONSE TO FRESNO COUNTY GRAND JURY COMMITTEE REPORT  
PLEASANT VALLEY STATE PRISON 2010-2011, FINAL REPORT #3**

The following information is submitted in response to the Fresno County Grand Jury's 2010-2011 Report #3, regarding Pleasant Valley State Prison (PVSP).

**FINDINGS.**

F301. California Code of Regulations (CCR), Title 15, Article 8, provides the processes for administrative appeals of internal grievances.

*The respondent AGREES.*

F302. Complaints received by the Fresno County Grand Jury seldom have completed the Title 15, Article 8, grievance process, and the request is returned for resubmission once the California Department of Corrections and Rehabilitation (CDCR) Form 602, Inmate/Parolee Appeal, process is completed.

*The respondent AGREES. In some cases, inmates fail to follow the established appeals process, and send multiple duplicate complaints to various agencies seeking assistance with their issues.*

F303. PVSP provides adequate resources for inmates to initiate and complete the grievance process.

*The respondent AGREES. CDCR Forms 602 are maintained in every housing unit within the prison and are available to every inmate upon request.*

F304. As evaluated by the grand jury, PVSP is in compliance with the processes and timelines in Title 15, Section 8.

*The respondent AGREES.*

- F305. The large volume of prisoner complaints creates excessive work on the administrative staff.

*The respondent AGREES. A large volume of inmate appeals are screened out daily due to the inmate failing to follow the established guidelines. This process is time consuming and usually results in inmates resubmitting the same appeal or mailing out complaints to various agencies seeking assistance.*

- F306. Upon arrival at PVSP, inmates are provided an orientation handbook, which includes the grievance procedure. Inmates have sufficient resources available to them to file an administrative grievance and to track its progress and decisions.

*The respondent AGREES. In addition to receiving an orientation handbook, inmates are given a CCR, Title 15, Crime and Prevention, Rules and Regulations Handbook, which depicts the entire appeals process.*

- F307. Completed CDC Form 602 complaints are stored in an unsecured area.

*The respondent AGREES. A portion of the completed CDCR Forms 602 are being maintained in an overflow room, which is accessible to staff members not assigned to the appeals department.*

#### RECOMMENDATIONS.

- R301. PVSP must provide a secure storage for the completed CDCR Form 602 complaints for the required four years as stated in Title 15. (F307)

*The appeals department has a secured conex box located outside of the secured perimeter of the prison in which to store appeals, consistent with policy guidelines. The conex is currently backlogged with appeals needing to be purged. PVSP is actively seeking a contract to have the outdated appeals shredded to create much needed space. In lieu of this, the appeals maintained in the overflow room have been moved into a secured office with access only to appeals staff.*

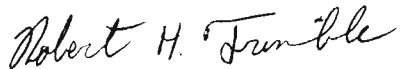
The Grand Jury was extremely thorough and engaged staff and inmates, as well as conducting physical plant inspections and records reviews to make their assessment.

I would like to take this opportunity to acknowledge and thank the Grand Jury for their time and interest in improving our facility.

The Honorable Gary D. Hoff  
Page 2

If you have any questions or require additional information, please contact me directly, at (559) 935-4950, or my Administrative Assistant, Lieutenant Douglas Roberts, at (559) 935-4972.

Sincerely,



ROBERT H. TRIMBLE  
Warden (A)

cc: Matthew L. Cate, Secretary  
Terri McDonald, Chief Deputy Secretary, Adult Operations  
George J. Giurbino, Director, Division of Adult Institutions  
W. J. Sullivan, Associate Director, General Population Levels III/IV, Division of Adult Institutions  
Rod H. Coburn, D.D.S., Foreman, 2010-2011/Fresno County Grand Jury

# **REPORT #4**

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## **REVIEW OF THE ELECTION PROCESS USED IN FRESNO COUNTY DURING THE NOVEMBER 2010 GENERAL ELECTION**



**FILED**

MAR 22 2011

FRESNO COUNTY SUPERIOR COURT

By \_\_\_\_\_ DEPUTY

**2010-2011  
FRESNO COUNTY GRAND JURY**



**FINAL REPORT  
#4**

**Fresno County  
2010 - 2011 Grand Jury  
Report # 4**

**Review of the Election Process Used in Fresno County During the  
November 2010 General Election**

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## **INTRODUCTION**

The Fresno County Grand Jury received a formal complaint claiming the reduction of polling sites in Fresno County for the November 2010 election resulted in disenfranchised voters, long lines at polling sites and confusion about where to vote. It was alleged that mismanagement by election officials affected voter turnout. The complainant also suggested the need for more transparency in planning future elections.

The number of polling sites after the June primary election was reduced from 222 to 114 for the November general election. This caused more confusion among voters at some consolidated polling sites and resulted in a larger number of provisional ballots.

Despite significant media attention to election issues, voter complaints to the Election's Office did not significantly increase compared to previous elections. The most common complaint was long lines during peak times at some polling sites. Other complaints focused on perceived inconvenience due to inadequate logistical support.

## **BACKGROUND**

During the budget planning process for FY 2010-2011, the County Administrative Office (CAO) and subsequently the Fresno County Board of Supervisors (BOS) chose to reduce the budget for the Elections Department (Fresno County Clerk/Registrar of Voters Office) in the amount of \$320,507 (13.5% of the original budget). This was confirmed during the budget meetings in June 2010.

This had a direct impact on the amount of money and personnel the Elections Department could allocate towards the November general election. The Fresno County Clerk knew early in 2010 there would be significant budget reductions. However, in June 2010 the budget was finalized. This confirmed the need to cut the number of polling sites and support staff working at each site. In addition, California Elections Code mandates ballots be finalized 88 days prior to the election. During the seven-week period leading up to the election, the polling site locations and 276 different ballot styles had to be determined and approved. In addition, a special district election for a newly unified school district was accommodated.

The Fresno Bee reported October 4, 2010 the Fresno County Clerk stated there will be a reduction in the number of voting precincts for the November 2, 2010 statewide general



election. This was the first time the public was made aware there would be a significant reduction in polling sites, which resulted in citizen concern and complaints from various organizations.

The following day, the BOS expressed its concern and requested a follow-up item be placed on their next agenda. On October 19, 2010, the BOS directed the CAO to work with the County Clerk/Registrar of Voters to implement voter education measures to ensure voters were aware of changes in polling locations.

As a result of voter concerns and the possibility of litigation, the County Clerk implemented twenty Saturday election sites three days before the general election. Post cards were mailed to all registered voters in Fresno County reminding them of their polling site location, which reduced the anticipated budgetary savings for the election process. The grand jury received testimony alleging the post card notification was essentially ignored or forgotten by a number of voters.

## **PURPOSE OF THE INVESTIGATION**

- Determine if any voters were disenfranchised because of the reduction and relocation of polling sites during the November 2010 general election.
- Analyze changes to election operations resulting from budgetary reductions.
- Evaluate the allegation of intentional voter disenfranchisement.
- Propose changes for improvement to future election voting procedures.

## **DISCUSSION**

Revenue shortages will continue to challenge all government entities for both the short and long term. The reduction of polling sites and staff during the November's general election was a further indication of these challenges.

During the past five years, the County Clerk's budget has been cut in half and lost 40% of their staff. It appears the remaining staff is professional and dedicated to the concept of conducting fair, open and accessible elections subject to budgetary constraints.

There is a perception the last election was filled with errors, when in fact; testimony supported that an accurate and professional election was conducted. However, some minor mistakes were made which could have been anticipated and mitigated with sufficient staff.

Testimony revealed there is no formal process for Poll Inspectors to submit critiques of the election process in their polling site. Therefore, policy does not exist for a retrospective review of previous election issues by polling site.

Testimony revealed reoccurring themes:

- Some polling sites were in rooms too small to handle the number of precincts and/or voting booths needed to serve the public.
- Some polling locations covered a very large geographical area.
- Re-numbering of precincts caused confusion.

- Insufficient number of poll workers and trained volunteers.
- During certain times of the day, wait times in lines were deemed excessive.
- Some polling sites were not adequately identified.
- Some voting locations were not easily accessible by public transit.
- Maps provided to the poll workers did not have sufficient detail to determine a voter's correct precinct/polling site.

## **CONCLUSION**

The grand jury is hopeful the CAO and BOS will find additional funds to assist the Fresno County Clerk/Registrar of Voters Office to continue conducting fair and accessible elections in the future. The threat that a lawsuit, voter invalidation and/or a costly re-election should be enough incentive to provide the resources needed to ensure that our elections remain fair, valid and a positive experience.

Realistically, however, money will continue to remain tight and earmarked for many other uses. Creative solutions will need to be considered in order for most situations to be resolved. In the future, citizens will also need to take more personal responsibility to ensure they know where to vote and have the needed transportation to get to their polling place. Voters can also choose to vote at the Election's Office in downtown Fresno. Additionally, there is the option to vote by mail. In fact, 58.2% of the total votes counted for the November 2010 general election were mail-in ballots. Voters have no excuse not to vote when many practical options are available. Inconvenience is not disenfranchisement. It is the County's responsibility to conduct the election. Ultimately, it is the voter's right and responsibility to vote.

Although mistakes were made, our investigations found them unintentional. However, funding and personnel reductions resulted in confusion and inconvenience. These situations must be addressed for future elections. Although there were challenges and some confusion, polling sites were chosen that met the criteria established in the California Elections Code.

## **FINDINGS**

- F401 In the past five years, the Elections Department has experienced budgetary and personnel cutbacks.
- F402 Between the June 2010 primary election and the November 2010 general election, 108 polling sites were eliminated in Fresno County.
- F403 Some voters were inconvenienced and frustrated with the voting experience.
- F404 In some cases, the polling facility was too small to accommodate the number of voters and voting booths.
- F405 Most projected cost savings were negated by Saturday voting and mailing of postcards.

- F406 Polling sites need better identification.
- F407 Precinct maps at the polling sites did not provide enough detail.
- F408 Poll Inspectors are not required to complete a written post-election critique.
- F409 Formal complaints from voters are not responded to via some type of follow-up.
- F410 In Fresno County, 58.2% of the total votes counted for the November 2010 general election were mail-in ballots.

## **RECOMMENDATIONS**

- R401 The BOS should provide adequate funding to ensure the ability of the County Clerk to maintain credible elections. (F401)
- R402 Review all polling sites and make appropriate changes - i.e. contract larger rooms, provide more voting booths, provide additional trained poll workers, provide more signage and maps, and reduce the number of precincts per polling site. (F402 – 404, F406 – 407)
- R403 Local municipalities should assist with costs by providing free polling sites and trained (unpaid) volunteer poll workers. (F401- F402)
- R404 Establish policy requiring on site Poll Inspectors to provide a written critique to be reviewed by senior election officials. (F408)
- R405 All complaints received by the Elections Department should be reviewed and a sample number of complainants contacted for further discussion and possible remedies. (F409)

## **REQUEST FOR RESPONSES**

Pursuant to Penal Code §933.05, the Fresno County Grand Jury requests responses to each of the specific findings and recommendations. It is required that responses from elected officials are due within sixty days of the receipt of this report and ninety days for all others.

### **RESPONDENTS**

- Phil Larson, Chairman, Fresno County Board of Supervisors (F401, R401)
- John Navarrette, Fresno County Administrative Officer (F401, R401)
- Victor Salazar, Fresno County Clerk (F401-409, R401-405)

## **SOURCES AND REFERENCES**

- 2007-2008 Fresno County Grand Jury Report #6
- California Elections Code
- Complaint forms filed with the Fresno County Clerk regarding the November 2010 election.
- Fresno County BOS Agenda – October 5, 2010 and October 19, 2010
- Members of the 2010-2011 Fresno County Grand Jury who acted as observers at many polling sites throughout Fresno County and at the Election Department during the 2010 general election.
- Interviews and conversations with polling site workers and voters from the November 2010 election.
- Interview with a member of the BOS.
- Interviews with representatives from the complainant organization.
- Interview with a senior representative from the Fresno County CAO's office.
- Interviews with representatives of the Fresno County Clerks Office.
- Polling site maps from the primary election in June 2010 and general election in November 2010.
- The Fresno Bee

# RESPONSES

---

A. PHIL LARSON, Chairperson,  
Fresno County Board of Supervisors  
R401

B. JOHN NAVARRETTE,  
Fresno County Administrative Officer  
R401

C. VICTOR SALAZAR,  
Fresno County Clerk  
R401 through R405





# County of Fresno

BOARD OF SUPERVISORS  
SUPERVISOR PHIL LARSON – DISTRICT ONE  
CHAIRMAN

June 22, 2011

The Honorable Gary Hoff  
Presiding Judge, Superior Court  
1100 Van Ness Avenue  
Fresno, CA 93721

RE: RESPONSE TO THE 2010-11 GRAND JURY FINAL REPORTS #4

Dear Judge Hoff:

The Board of Supervisors and County Administrative Officer (CAO) have approved their official responses to the recommendations pertaining to Fresno County and the CAO contained in the 2010-11 Grand Jury Final Reports #4. The responses are submitted herewith in fulfillment of Penal Code Section 933(c).

On behalf of the Fresno County Board of Supervisors and the County Administrative Office, we would like to take this opportunity to thank the Grand Jury for their hard work and to assure them that Fresno County takes the concerns raised in these reports very seriously.

Sincerely,

Phil Larson, Chairman  
Board of Supervisors

Sincerely,

John Navarrette  
County Administrative Officer

Enclosure

**County of Fresno**  
**Board of Supervisors**  
**and**  
**County Administrative Officer**  
**RESPONSE TO THE**  
**2010-11**  
**FRESNO COUNTY GRAND JURY**  
**FINAL REPORT #4**



**REVIEW OF THE ELECTION PROCESS USED IN FRESNO COUNTY DURING THE  
NOVEMBER, 2010, GENERAL ELECTION**

Please find below the Fresno County Board of Supervisors' and County Administrative Officer's requested response to the 2010-11 Grand Jury Final Report #4.

**Findings**

**F401: In the past five years, the Elections Department has experienced budgetary and personnel cutbacks.**

The Board of Supervisors and the County Administrative Officer agree with the finding. During this same time, virtually all County departments have been subjected to similar budgetary and personnel cutbacks.

**Recommendations**

**R401: The BOS should provide adequate funding to ensure the ability of the County Clerk to maintain credible elections.**

The Board of Supervisors and the County Administrative Officer agree that the Board allocates appropriations to support all mandated County functions, including conducting elections, within the limits of available funding. The Board and the County Administrative Officer rely on the elected County Clerk, who has the additional duties as the Registrar of Voters, to effectively and efficiently manage allocated and other resources to fulfill the responsibilities of conducting credible elections.





# County of Fresno

COUNTY CLERK / REGISTRAR OF VOTERS  
VICTOR E. SALAZAR

May 23, 2011

RECEIVED  
BY [Signature] DATE 5/24/11

Rod H. Coburn, D.D.S., Foreman  
2010-2011 Fresno County Grand Jury  
1100 Van Ness Avenue  
Fresno CA 93724-0002

Dear Mr. Coburn:

The attached "Response to the 2010-11 Fresno County Grand Jury" is being submitted pursuant to California Penal Code section 933. I trust that it provides adequate responses to your findings and recommendations.

Please thank the members of the Grand Jury for their efforts and attention expended on this very critical issue before the residents of the County of Fresno.

Sincerely,

*Victor E. Salazar*

Victor E. Salazar  
Fresno County Clerk/Registrar of Voters

Attachment

**FRESNO COUNTY CLERK/REGISTRAR OF VOTERS**  
**RESPONSE TO THE**  
**2010-11**  
**FRESNO COUNTY GRAND JURY**  
**FINAL REPORT NO. 4**

## **Review of the Election Process Used in Fresno County During the November 2010 General Election**

### **FINDINGS:**

#### **F401 In the past five years, the Elections Department has experienced budgetary and personnel cutbacks.**

The County Clerk/Registrar of Voter's Office (hereafter "County Clerk") concurs with this finding. The County Clerk has received continuous budget cuts and staffing reductions during the past five years. Departmental staffing has been reduced from 56 to 23 proposed positions for the 2011-12 fiscal year.

While staffing in the elections unit diminished from 18.3 in the 2008-09 fiscal year to 14.5 proposed for 2011-12, all departmental staff are called into service for each election. Therefore, the total decrease in staffing impacts the department's ability to conduct elections with trained, experienced election workers.

The net county cost allocation for the County Clerk has also declined. In fiscal year 2005-06, it was \$4,012,430. In 2010-11, it was \$2,372,258. The recommended net county cost for 2011-12 is proposed to be \$3,568,940 to reflect two major scheduled elections.

Furthermore, voter registration has increased by 100,000 during the last decade. We are now required to operate two separate election systems; optical scan voting machines and touch screen voting machines. Election regulations have also become more cumbersome with major requirements and restrictions having been imposed upon local election offices. Additionally, California now has more voter initiatives than ever before which require manual verification at the local level of thousands of signatures on initiative petitions. Finally, the number of elections has increased. There have been more elections in the last ten years than any other decade.

While staffing has declined, the work load has increased. This has placed a heavy burden on the Elections Department.

**F402 Between the June 2010 Primary Election and the November 2010 General Election, 108 polling sites were eliminated in Fresno County.**

The County Clerk concurs with this finding. Consolidation of polling sites was implemented as a cost saving measure. In the June Primary Election, there were 222 polling place locations. In the November General Election, there were 114. Thus, there were 108 fewer polling sites.

**F403 Some voters were inconvenienced and frustrated with the voting experience.**

The County Clerk concurs with this finding. News reports and complaints demonstrated voter frustration over the reduction of polling sites which were necessitated by the decrease in funding for elections.

**F404 In some cases, the polling facility was too small to accommodate the number of voters and voting booths.**

The County Clerk concurs with this finding. In some cases, the reduction in polling sites and last minute voting resulted in crowded polling places.

**F405 Most projected costs savings were negated by Saturday voting and mailing of postcards.**

The County Clerk does not agree with this finding. Measures were implemented to mitigate the reduction in polling sites. These included: the standard mailing of a Sample Ballot and Voter Guide with the location and manner of voting to every registered voter; a polling place look-up feature on the County Clerk's website; mailing of a follow-up post card to every voter household with the location of the polling place; placement of a sign at every voting site used in the June Election that was not used in the November Election; initiation of a media campaign to publicize the mitigation efforts; establishment of a toll-free telephone number for voters to call for location information; and, the establishment of Saturday voting at 20 locations.

The cost savings from the consolidation of polling places amounted to \$189,612.55. However, the cost of Saturday voting, post cards and signage amounted to \$76,383.45. The net savings from precinct consolidation in relation to the mitigation efforts is \$113,229.10.

**F406 Polling sites need better identification.**

The County Clerk disagrees with this finding. In the November General Election, polling place locations received more publicity than in any other election. Additionally, there is multiple signage for each polling location. Three (3) yard signs and ten (10) posters are issued to each polling precinct with training and instructions to poll workers on their placement.

**F407 Precinct maps at the polling sites did not provide enough detail.**

The County Clerk disagrees with this finding. Maps are not required to be posted at polling sites. However, a map of each polling precinct is provided for poll workers. On occasion, these maps are shared with voters to assist them with a description of the boundaries to respective polling locations.

The maps are not regular street maps. They are election maps with adequate information for the intended purpose as utilized by poll workers. They are adequate for this purpose.

**F408 Poll inspectors are not required to complete a written post-election critique.**

The County Clerk agrees with this finding. In prior elections, Inspectors were not required to complete a written post-election critique. However, the next level of supervision is the Election Coordinator. Election Coordinators are instructed to conduct a post-election survey with each Inspector. Additionally, Inspectors are trained and instructed to follow the chain of command to report problems and to advise voters of their option to call a designated telephone number to complain directly to the Elections Office.

**F409 Formal complaints from voters are not responded to via some type of follow up.**

The County Clerk disagrees with this finding. The Elections Office receives complaints in various forms; written letters, emails, telephone calls and complaint forms that are available on line at the County Clerk's website or upon request. Each of the letters, emails and telephone calls receive a response. However, complaint forms that relate to voter fraud or some other violation of law are forwarded to the appropriate investigative agency. The voter is advised of the referral; however, final resolution of these complaints is determined by the respective investigative agency.

**F410 In Fresno County, 58.2% of the total votes cast counted for the November 2010 General Election were mail-in ballots.**

The County Clerk agrees with this finding. In the November 2010 General Election, 204,251 out of 391,572 ballots were cast in Fresno County. There were 118,777 vote by mail ballots returned to the Elections Office. Thus, 58.2% of the ballots received were vote by mail ballots.

**RECOMMENDATIONS:**

**R401 The BOS should provide adequate funding to ensure the ability of the County Clerk to maintain credible elections.**

The County Clerk agrees with this recommendation. Working with the County Administrative Office and directly advising the Board of funding concerns, the County Clerk intends to work cooperatively to resolve funding issues during the budget hearing process and the quarterly budget reviews.

**R402 Review all polling sites and make appropriate changes – i.e. contract larger rooms, provide more voting booths, provide additional trained poll workers, provide more signage and maps, and reduce the number of precincts per polling sites. (F402 – 404, F406 – F407)**

The County Clerk is in the process of implementing this recommendation. However, the extent of implementation will be determined by the resources allocated to the department.

**R403 Local municipalities should assist with the costs by providing free polling sites and trained (unpaid) volunteer poll workers. (F401 – F402)**

The County Clerk is in the process of implementing this recommendation. A civic engagement program has been initiated which will rely on local governmental cooperation and volunteer poll workers to provide additional resources to conduct future elections.

**R404 Establish policy requiring on site Poll Inspectors to provide a written critique to be reviewed by senior election officials. (408)**

The County Clerk agrees with this recommendation and will develop a “survey form” for each Inspector that will assess the performance of their respective polling site and provide for comments regarding improvement and also a description of specific incidents that require follow-up or investigation.

**R405 All complaints received by the Elections Department should be reviewed and a sample number of complainants contacted for further discussion and possible remedies. (F409)**

The County Clerk agrees with this recommendation and will develop a post- election review process and require follow-up on a sample of the complaints or incidents reported.

# REPORT #5

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## JUSTICE RUNS AFOUL IN FOWLER





**FILED**

MAY 18 2011

FRESNO COUNTY SUPERIOR COURT

By \_\_\_\_\_ DEPUTY

**2010-2011  
FRESNO COUNTY GRAND JURY**



**FINAL REPORT**

**#5**

**Fresno County  
2010 – 2011 Grand Jury  
Report #5**

**- Justice Runs Afoul in Fowler -**

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## **INTRODUCTION**

The Fresno County Grand Jury received a complaint regarding the failure of the former Fowler Chief of Police (Chief) to submit completed criminal cases to the Fresno County District Attorney (DA) for review and prosecution in a timely manner.

## **BACKGROUND**

The City of Fowler (City) has a population of approximately 5,400. The city has 35 employees including the police department. The city's governing body is comprised of 5 council members, which includes the Mayor. The City Manager, appointed by the City Council, is responsible for overseeing the management of the daily operations of the city including the Fowler Police Department.

The Fowler Police Department currently consists of an Acting Police Chief, three corporals, six patrol officers and two civilian employees.

The Chief began his career with the Fowler Police Department as a reserve officer in February 1993. Four years later he became a full time officer and rose through the ranks to interim Chief in January 2000. In November of the same year, the City Council appointed him as Fowler Chief of Police.

## **PURPOSE OF THE INVESTIGATION**

- Determine if unfiled criminal cases exist within the Fowler Police Department.
- Evaluate current criminal case filing procedures used by the Chief.
- Review and assess adherence with existing oversight policies and procedures of the City.

## **DISCUSSION**

A 2010-2011 Fresno County Grand Jury investigation has revealed an excess of 600 unfiled criminal cases dating back to 2004. The files were found in the former Chief's office prior to his resignation effective January 2011. Police officers made arrests, wrote their reports and submitted them to the Chief in a timely manner in accordance with proper procedures.

Evidence presented to the grand jury revealed the unfiled cases covered a vast array of criminal activity. These cases included terrorist threats, attempted murder, sex offenses, drunk driving, driving with a suspended license, domestic violence, failure to register as a sex offender,

embezzlement, burglary, vandalism and drug possession. Whenever a citizen or police officer inquired about the status of a particular case, the Chief would allege they were being researched prior to submission to the DA.

Testimony indicated the Chief at the time advised the City Manager as early as 2003 that he was falling behind in properly filing cases. The grand jury heard testimony that during an evaluation in 2005 by the Fowler City Manager, the Chief was advised to "clean up" the backlog of unfiled criminal cases and to train and delegate some of his responsibilities to appropriate staff members. Further investigation revealed the City Manager did not follow up to ensure this issue was addressed and corrected by the Chief. During testimony under oath, the grand jury received credible evidence the Chief did not file criminal complaints in a timely manner and did not delegate this task.

Preliminary testimony revealed unfiled cases were kept in the Chief's locked office and only the Chief had a key to this office. However, subsequent testimony under oath revealed the City Manager also had a key to the Chief's office providing access at all times. The severity and amount of the unfiled cases were discovered after the Chief was placed on administrative leave in November 2010.

At that time the Acting Chief was tasked with cleaning up the backlog. Five (5) months later in late March 2011, the grand jury visited the City of Fowler and observed the former Chief's office and found the office to be in the same general state of disarray. The grand jury members who observed the office were appalled and expressed their outrage to the City Manager. He stated the organization of the office would become a top priority and begin immediately.

On March 29, 2011, the grand jury requested from the City Manager any and all personnel files related to the Chief. He was able to produce a personnel file from Human Resources. However, the police department personnel file was not located due to the conditions in the Chief's office. The grand jury was notified on March 31, 2011, the police chief's department personnel file had been located. A corresponding memo stated certain documents had been removed from the Chief's department file prior to our review.

During the grand jury's investigation, it became evident there is an overall lack of written operational policies and procedures within the City, including but not limited to the proper disposal of surplus city property and expense reimbursement. This has caused confusion resulting in lax oversight within various City departments by managers, supervisors and elected officials.

Pursuant to City of Fowler Resolution No. 1785 G, written employee performance evaluations are to be conducted by the department head prior to the employee's anniversary date. The grand jury heard sworn testimony the City Manager and the Chief rarely, if ever, conducted written performance evaluations, which is a direct violation of policy. One written performance evaluation of the police chief by the city manager in 10 years is not consistent with best management practices. The only consistent evaluation the grand jury was able to locate was performance evaluations conducted by the Mayor of the City Manager from 2001 through 2010.

## CONCLUSIONS

The citizens of Fowler have been ill served by some of their locally elected and appointed officials. This is illustrated by the failure of the City Manager and City Council to exercise oversight. In addition, the management style of the former Chief discouraged communication with his staff.

The grand jury investigation found police officers made arrests, filed their reports and submitted them to the Chief for his review and his submission to the DA in a timely manner. Once submitted to the Chief, most cases were kept in his locked office where they remained for many months and years until recently discovered. The majority of these cases exceeded the statute of limitations for filing. Testimony revealed the processing of the criminal cases to be submitted to the DA could have been delegated to a clerical position and did not need to be micromanaged by the Chief.

The grand jury also found many of the City's written policies and procedures are vague and ambiguous. Oversight by the Mayor, City Council and City Manager is mandatory to ensure proper and efficient operations.

The grand jury found their investigation was compromised when the admonition regarding confidentiality was violated and disregarded by several key witnesses.

Our investigation found a total lack of concern by City leaders to ensure the well-being and safety of their community. The City Manager is charged with the ultimate responsibility to ensure he and his department heads are in compliance with job performance, policies and procedures. Our investigation led to the conclusion the City Manager did not take his responsibilities seriously.

The citizens of Fowler deserve better representation and service from their elected and appointed officials. The City government must become more professional, accountable and ethical in representing their constituents.

## FINDINGS

- F501 An excess of 600 unfiled criminal cases dating back to 2004 were discovered in the Chief's office in November 2010.
- F502 A majority of these unfiled cases cannot be prosecuted because they exceed the statute of limitations.
- F503 It was determined by the grand jury these unfiled cases were held by the Chief in his office, which was locked at all times.
- F504 When citizens and members of the police department inquired as to the status of their cases, the Chief routinely told them they were being reviewed prior to filing.

- F505 Lack of policies and procedures for the City has hampered efficient operations of many City departments.
- F506 Only one written performance evaluation of the former Chief by the City Manager during his tenure as Chief was located.
- F507 The grand jury found the City Manager is not adequately performing his job duties as required by current policies and procedures.

## **RECOMMENDATIONS**

- R501 All policies and procedures for City operations (and corresponding forms) should be reviewed, re-written or updated as needed, including the policy regarding the timely review and filing of criminal cases for prosecution by the DA. (F501 - F507)
- R502 The City Council and City Manager should exercise more diligent leadership in performing their duties and ensure policies and procedures are followed. (F505 - F507)
- R503 Until the status of the 600 plus cases is resolved, a top priority and sense of urgency should mandate the City Manager and Acting Chief of Police provide a weekly written update to the City Council regarding these unfiled criminal cases and any related liability issues that may occur. (F501, 502)
- R504 The DA should investigate the Fowler Police Department to determine if there was any criminal intent by the former Chief when he failed to file cases on time with the DA. Furthermore, it should be resolved if any other individuals were culpable for not performing their duties. (F501 – F507)

## **REQUEST FOR RESPONSES**

Pursuant to Penal Code §933.05, the Fresno County Grand Jury requests responses to each of the specific findings and recommendations. It is required that responses from elected officials are due within sixty days of the receipt of this report and ninety days for all others.

### RESPONDENTS

- Elizabeth Egan, Fresno County District Attorney (F501 – F507, R504)
- David Elias, Fowler City Manager (F501 – F507, R501 – R503)
- Fowler City Council (F501 – F507, R501 – R503)
- Russ Snow, Acting Police Chief – City of Fowler (F501 – F506, R503)

## **SOURCES AND REFERENCES**

- City of Fowler Policies and Procedures including Resolution No. 1785 G
- City of Fowler Financial Reports
- Interviews with Senior City Officials
- Interviews with various City Council members
- Interviews with various past and present members of the Fowler Police Department
- A sampling of the 600 plus unfiled criminal cases
- Personnel files of current and past city employees
- Written communications between various City employees and agencies

# RESPONSES

---

- A. ELIZABETH EGAN,  
Fresno County District Attorney  
R504
- B. DAVID ELIAS,  
Fowler City Manager  
R501 through R503
- C. FOWLER CITY COUNCIL,  
R501 through R503
- D. RUSS SNOW,  
Acting Police Chief, City of Fowler  
R503





**County of Fresno**  
**Office of the District Attorney**  
**Elizabeth A. Egan, District Attorney**

July 18, 2011

The Honorable Gary Hoff  
Presiding Judge  
Fresno County Superior Court  
1100 Van Ness Avenue  
Fresno, CA 93721

RE: Response to the 2010-2011 Grand Jury Final Report #5:  
*Fowler Police Department*

Dear Judge Hoff:

The Fresno County District Attorney's Office (DA's Office) appreciates the Grand Jury's hard work in their investigation of the apparent failure of the Fowler Police Department to refer appropriate criminal cases to the DA's Office for review for prosecution. An essential first step in the criminal justice system is the appropriate use of discretion by law enforcement agencies in the referral of prosecutable criminal cases to the DA's Office.

This serious problem was brought to the attention of the DA's Office in December 2010. Since then, with the full cooperation of Acting Fowler Police Chief Russ Snow and the Fowler Police Department, the DA's Office has ensured that criminal cases ready for prosecutorial review are promptly referred to our office.

The Fowler Police Department has been fully cooperative and responsive to the requests by the DA's Office for information on their pending criminal cases. With the departure of the former Fowler Chief of Police, the DA's Office has determined that criminal cases are now received by our office in an appropriate manner within the limits of the available resources of Fowler Police Department.

Findings:

*Finding 501: An excess of 600 unfiled criminal cases dating back to 2004 were discovered in the Chief's office in November 2010.*



The Honorable Gary Hoff

RE: Response to the 2010-2011 Grand Jury Final Report #5

July 18, 2011

Page Two

**The DA's Office has determined that 639 criminal cases were not referred to our office with a request for prosecution during the period from 2003 to 2010. The Official Response to the Grand Jury Report by the City of Fowler stated this finding is correct.**

*Finding 502: A majority of these unfiled cases cannot be prosecuted because they exceed the statute of limitations.*

**According to a review by the DA's Office of the offense dates of these 639 unfiled criminal cases, a majority of those cases cannot now be prosecuted only because they exceed the statute of limitations. The DA's Office has not reviewed all of the cases and is therefore unable to determine how many of these criminal cases could have been prosecuted had they been submitted to our office within the statute of limitations.**

*Finding 503: It was determined by the grand jury these unfiled cases were held by the Chief in his office, which was locked at all times.*

**The DA's Office does not have independent information regarding the exact location of these 639 unfiled criminal cases or who had access to the cases. The Official Response to the Grand Jury Report by the City of Fowler stated the unfiled cases were kept in a locked office but the office was not the former Chief's business office.**

*Finding 504: When citizens and members of the police department inquired as to the status of their cases, the Chief routinely told them they were being reviewed prior to filing.*

**The DA's Office does not have independent information regarding whether citizens or members of the police department inquired about the 639 unfiled criminal cases or what they were told if they did. The Official Response to the Grand Jury Report by the City of Fowler stated members of the police department did inquire about the unfiled cases and were told the cases were being reviewed prior to filing.**

*Finding 505: Lack of policies and procedures for the City has hampered efficient operations of many City departments.*

**The internal policies and procedures of a city, absent criminal conduct, are not matters within the supervision or control of the DA's Office.**

The Honorable Gary Hoff

RE: Response to the 2010-2011 Grand Jury Final Report #5

July 18, 2011

Page Three

*Finding 506: Only one written performance evaluation of the former Chief by the City Manager during his tenure as Chief was located.*

**The internal personnel issues of a city, absent criminal conduct, are not matters within the supervision or control of the DA's Office.**

*Finding 507: The grand jury found the City Manager is not adequately performing his job duties as required by current policies and procedures.*

**The internal personnel issues of a city, as well as their policies and procedures, absent criminal conduct, are not matters within the supervision or control of the DA's Office.**

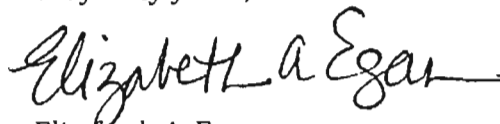
Recommendations:

*R504: The DA should investigate the Fowler Police Department to determine if there was any criminal intent by the former Chief when he failed to file cases on time with the DA. Furthermore, it should be resolved if any other individuals were culpable for not performing their duties. (F501-507)*

**The DA's Office is in the process of reviewing all the unfiled criminal cases from Fowler Police Department. Acting Police Chief Snow and the Fowler Police Department are fully cooperating with this time consuming and labor intensive review. To date, a review by the DA's Office and by Fowler Police Department of the unfiled criminal cases has not revealed evidence of criminal intent. Absent evidence of a crime, the DA's Office will not conduct a criminal investigation of this matter.**

This concludes my comments on Final Report #5 of the 2010-2011 Fresno County Grand Jury.

Very truly yours,



Elizabeth A. Egan  
District Attorney

cc: Board of Supervisors  
John Navarrette, County Administrative Officer  
Foreperson, Fresno County Grand Jury

2220 Tulare Street, Ste. 1000, Fresno, CA 93721/ 559-600-3232



May 25, 2011

The Honorable Gary Hoff, Presiding Judge  
Fresno County Superior Court  
1100 Van Ness Avenue  
Fresno, CA 93724

Re: Official Response to 2010-2011 Fresno County Grand Jury Report #5

Dear Judge Hoff:

This is the City of Fowler's consolidated response to the 2010-2011 Grand Jury Report #5 pertaining to the Fowler Police Department ("Report"). This response is written on behalf of Respondents the Fowler City Council, the City Manager David Elias, and the Interim Police Chief Russ Snow. Please promptly post the response on the Superior Court's web page and make appropriate copies available to the public.

### INTRODUCTION

The City of Fowler is a well run general law city with a population of approximately 5700 residents. The City has an experienced professional staff and is one of the best run small cities in the State. The City has been able to balance its budget during the economic downturn without any layoffs or significant reduction in services. The City's business environment continues to thrive and expand. Despite it's size, the City of Fowler is a full service City. The City operates a full time Police Department with 11 regular officers and 4 reserve officers. The City also has an active volunteer Fire Department. There are a total of 28 full time and 6 part time City employees.

The Grand Jury makes broad allegations, without factual support, that the City's elected and appointed officials do not take their job seriously and have a total lack of concern to ensure the well being and safety of their community. The fact is, the Grand Jury investigation revolved around the failure of one official, the former Police Chief, to ensure that police reports were timely processed. The City promptly addressed that issue upon discovery that the Chief was not handling the reports. This occurred before the Grand Jury became involved. There were no other problems discovered with the Police Department nor is there any evidence that the City Manager or City Council failed to perform their jobs. In fact, the exact opposite is true. Nor were the policies and procedures of the Police Department inadequate.

## GENERAL RESPONSE TO DISCUSSION SECTION OF THE REPORT

### Unfiled Reports

The focus of the Report is on unfiled criminal cases and when the City Manager knew about those cases. The Report states the following that the Grand Jury determined were relevant to its conclusions: (1) The City Manager knew as early as 2003 that the Chief of Police was falling behind in properly filing cases; (2) in 2005 during an evaluation the City Manager advised the Chief of Police to clean up the backlog of unfiled cases and suggested delegation of responsibilities; (3) the City Manager had a key to the Chief's locked office.

The City Manager does not recall the Chief of Police informing him in 2003 that he was falling behind in properly filing cases. In 2005, the City Manager told the Police Chief to clean up and organize his office. A review of the evaluation shows there was no reference to a backlog of cases. The Chief used two rooms in the Police Department for his primary use. He used the former City Council conference room through 2006. Subsequently he used the office by the back door and the conference room became available for the officers to use as their work stations. When the Chief used these rooms, the Chief stored confidential police employee files and therefore kept the rooms locked. The Chief also kept the unfiled reports in these rooms. The Chief did not have a regular business office and there was no reason for the City Manager to regularly enter these rooms. The City Manager has a master key to the City Hall building of which the Police Department is part of. Regardless of the City Manager's ability to access the rooms, he would not have known that they contained several boxes of unfiled cases.

The City Manager became aware that there were possibly cases not being timely filed in March 2009. The issue was brought to the City Manager's attention by a Council Member who showed the City Manager a photograph of a couple dozen reports in a stack. There was no indication that there was a serious problem, only that some reports were not being filed in a timely manner. The City Manager met with the Police Chief to discuss the issue and was assured that the reports were being taken care of. The City Manager asked the Police Chief if he needed assistance. The City Manager and Chief agreed to hire a support services manager to assist the Chief with this and other administrative duties. This occurred in April 2009.

The City Manager met with the Chief regularly to discuss police department matters and provide feedback. The Chief always assured the City Manager that the support services manager was working out and business was being taken care of. The Chief was not forthcoming about how far behind he had become in filing reports. None of the officers ever expressed a concern to the City Manager about their reports not being filed.

In June 2010 the City Manager received two inquiries from individuals about not receiving their police reports. He brought this to the Chief's attention and followed up with the parties. They both thanked the City Manager and stated their issues had been handled. This alerted the City Manager that there might still be an issue with the timely filing of police reports. On July 15, 2010 the City Manager and City Attorney met with the Chief on this precise issue. From this point forward the City Manager and City Attorney took multiple steps with the Chief to ensure that any outstanding reports were promptly completed and filed and that reports were kept

current thereafter. The City Manager imposed deadlines and asked for a full accounting of the reports. During this time period the City Manager learned that there were unfiled reports dating back to at least the beginning of 2009. These multiple steps ultimately led to the Chief taking leave and Russ Snow being hired as acting Chief of Police effective November 3, 2010. After Chief Snow became the acting Police Chief the City Manager learned of the magnitude of the unfiled reports and the problem was immediately addressed by Chief Snow. There was a period of approximately three and one-half months from when the City Manager knew that the Chief was not performing his responsibilities to when Chief Snow was hired to address the problem.

#### Chief's Office: Chief Snow's Responsibilities

The Grand Jury states that they found the former Chief's office in the "same general state of disarray" in March 2011, five months after Chief Snow was tasked with cleaning up the report backlog. The Grand Jury had never been to the office before and had no idea what Chief Snow had done prior to their visit in March 2011. Chief Snow cleaned up the office as time permitted.

Not only had Chief Snow been tasked with going through the records and reports kept in the Chief's locked office/storage facility, but Chief Snow had to tend to his other duties as Chief of Police. These included: (1) working with county and state agencies to combat a local business which is the site of numerous disturbances, some involving weapons, prostitution, drugs, and allowing minors inside; (2) designating a training officer and coordinating a training schedule to ensure compliance with POST requirements; (3) negotiating the purchase and transfer of old firearms for new weapons for the Department with a savings of \$20,000 to the citizens of Fowler; (4) inspections of Department vehicles and coordinating much needed maintenance; (5) coordinating with county and state agencies the closure of a drug house; (6) development of policies and procedures for phlebotomy services for blood draws for DUI drivers; (7) coordination of a warrant sweep of wanted persons in Fowler; (8) developing new schedules for the officers; (9) coordinating and conducting a sweep of sex offender registrants to ensure compliance with PC 290.

#### Operational Policies and Procedures

The report states there is an overall lack of written operational policies and procedures within the City, including, but not limited to the proper disposal of surplus property and expense reimbursement.

The City is puzzled as to what this generalized statement has to do with the unfiled police reports. By law the Grand Jury is not supposed to engage in fishing expeditions. More significantly, the Grand Jury statements are wrong. The City has many legally reviewed, well written and effective policies and procedures. For example, the City has policies relating to: harassment, equal opportunities, substance abuse and zero tolerance, technology use, facilities use, youth recreational funding, illness and injury prevention, travel and expense, donations, purchasing, claims procedures, public records requests, and customer relations. These policies are not vague and ambiguous. The City provides regular training to staff on these policies. To our knowledge, none of these policies were reviewed by the Grand Jury.

There is no requirement to have written surplus property procedures. It has been the historical practice of the City to seek case by case guidance from the City Council prior to disposing of surplus property.

The City has expense reimbursement policies for both the City Council and staff. These policies were last updated in 2006 to conform to changes in State law.

Resolution 1785G, the City's personnel policies and procedures, is updated on a regular basis and was last updated in 2008.

The Police Department's Policy Manual is a comprehensive manual drafted by legal professionals in the field and is based upon a model used throughout the State. The 55 members of the Central San Joaquin Valley Risk Management Authority all use this Policy Manual as a model. The Chief of Police and City Attorney regularly undertook a comprehensive review of the Manual to tailor it to City of Fowler needs. The last comprehensive review and update occurred in 2009. The consultant (LEXIPOL) that prepared the model manual provides regular updates on six month intervals to member agencies.

#### Lax Oversight Within Various Departments

The Grand Jury states that the lack of policies has caused confusion resulting in lax oversight within various City departments by managers, supervisors and elected officials.

The City is puzzled as to what this generalized statement has to do with the unfiled police reports. Again, by law the Grand Jury is not supposed to engage in fishing expeditions. More significantly, there is no factual basis for these generalized statements. Fowler is a small City with a small staff. All employees, except for obvious reasons those of the Police Department, communicated with each other on a regular basis and shared information as needed. The City Manager kept the City Council abreast of all significant issues and regularly met with department heads and other staff.

With respect to the Police Department, police departments by their nature function different than other city departments. They operate under a paramilitary structure with a strict chain of command from the chief of police on down. Operation of a police department also requires special training and expertise. For these reasons, there is much more reliance upon the chief of police to run his or her department than the department heads of other departments.

#### Performance Evaluations

The Grand Jury states that the City Manager only conducted one written evaluation of the Chief of Police. The City Manager regularly met with the Chief of Police to review overall performance of the Department and the Chief. The Grand Jury reviewed only two personnel files and therefore do not know how often written evaluations of other employees occurred.

## GENERAL RESPONSE TO CONCLUSION SECTION OF THE REPORT

Respondents disagree with the conclusion that the City Manager and City Council failed to exercise oversight. Neither the City Manager or City Council is responsible for running the Police Department. The Police Department could not function if the City Council or City Manager tried to operate the Department. They do not have the training and expertise and would interfere with the paramilitary structure of the Department. It is also beyond the role of the City Council to manage the day to day activities of the City. That responsibility falls upon the City Manager. As noted above, the City Manager addressed the issue with the Police Chief once he learned of it.

The Grand Jury states that the processing of the criminal cases could have been delegated to a clerical position and that they did not need to be micromanaged by the Chief. Once the reports are completed, they could be delegated to a clerical person for filing with the District Attorney. However, it would be inappropriate to delegate the task of completing the report to a clerical person. The Police Department's Policy Manual, Section 344.1.1 specifically provides that it "is the primary responsibility of the assigned officer to ensure that reports are fully prepared ... ." Many of the reports Interim Chief Snow discovered needed additional work before they would be ready for filing.

The Grand Jury states that many of the City's written policies and procedures are vague and ambiguous. The City is not aware of what policies the Grand Jury is referring to or how they are vague and ambiguous. With respect to Police Department operations, as noted the Police Department's Policy Manual is comprehensive and consistent with all legal requirements.

The Grand Jury states that the investigation was compromised when the admonishment regarding confidentiality was violated and disregarded by several key witnesses. The City is unaware of what witnesses violated the admonishment or how the investigation was compromised.

The Grand Jury states that there was a total lack of concern by City leaders to ensure the well-being and safety of the community and the City Manager did not take his job seriously. As noted above, this is not the case. The Report relates to one isolated case concerning a backlog of police reports, which while a serious matter, is a great anomaly. When the City Manager realized that a problem existed and Chief Jamgochian was not taking care of the problem, the City Manager took immediate action. It is short-sighted and unfair for the Grand Jury to conclude, and state to the citizens, that there is a "total lack of concern by City leaders to ensure the well-being and safety of the community." It shows unsound thinking and bias, to judge all City leaders based on one individual's isolated actions, and call into question the actions of every individual in a management position. The elected Fowler City Council and its appointed officials take their responsibilities seriously. They are accountable, professional individuals who truly care about the Fowler community.

## RESPONSE TO SOURCES AND REFERENCES

The Grand Jury states that it held interviews with various City Council members. The City knows of only one Council Member interview. If other Council member interviews occurred, they were without knowledge of the entire Council, the City Manager, or the City Attorney. It is also possible that confidential Council closed session and attorney-client privileged information was illegally released.

The Grand Jury states that it reviewed the personnel files of current and past city employees. The Grand Jury reviewed the former Police Chief's file and the current City Manager's file. The Grand Jury reviewed no other personnel files.

## RESPONSE TO FINDINGS

Finding F501: This finding is correct.

Finding F502: This finding is correct. Some cases that were sent to the District Attorney that were not beyond the statute of limitations were returned as not prosecutable for various reasons.

Finding F503: It is true that the unfiled cases were kept in a locked office. However, as noted above, this was not the Chief's business office.

Finding F504: This finding is true as to members of the Police Department. Whether this finding is true as to citizen inquiries can only be verified by the former Chief of Police. The City reasonably assumes this is what was occurring.

Finding F505: This finding is not correct. Section 344 of the Police Department Policy Manual specifically addresses report preparation. The City is unaware of what policies and procedures the City lacks that "hampered efficient operations of many City departments". As noted the City has many legally reviewed well written and effective policies and procedures.

Finding F506: This finding is correct. However, the City Manager regularly met with the Chief of Police to review overall performance of the Department and Chief.

Finding F507: This finding is incorrect. Regular evaluations of the City Manager, which the Grand Jury acknowledged, reveal that the City Manager was adequately performing his job duties as required by current policies and procedures. Those requirements are spelled out in the City's Municipal Code.



RESPONSE TO RECOMMENDATIONS

Recommendation R501: The City will follow this recommendation.

Recommendation R502: This was an isolated incident by one department head. Responsibility for compliance with the Police Department's Policy Manual rested with the Chief of Police. Under the Council-Manager form of government, responsibility of the day to day operation of the City rests with the City Manager and Department Heads. The City Manager is charged with carrying out policy decisions made by the City Council. As noted, the City Council and City Manager have exercised diligent leadership in performing their duties. They will continue to ensure that policies and procedures are followed within their respective roles and responsibilities.

Recommendation R503:

The Interim Chief of Police and City Manager will update the Council as new information is received and otherwise in accordance with prudent practices.

Recommendation R504:

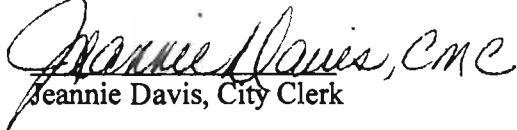
This recommendation falls within the responsibility of the District Attorney. The Interim Chief of Police did not find any evidence of a criminal intent during his review of the unfiled cases.

APPROVED BY THE CITY COUNCIL, MAY 24, 2011



David Cardenas, Mayor

ATTEST:



Jeannie Davis, City Clerk

Cc: Elizabeth Egan, Fresno County District Attorney

# REPORT #6

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## MENTAL HEALTH SERVICES PROVIDED IN THE FRESNO COUNTY JAIL



FILED

JUN 07 2011

FRESNO COUNTY SUPERIOR COURT

By \_\_\_\_\_ DEPUTY

**2010-2011  
FRESNO COUNTY GRAND JURY**



**FINAL REPORT**

**#6**

**Fresno County  
2010 - 2011 Grand Jury  
Report # 6**

**- Mental Health Services Provided in the Fresno County Jail -**

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## **INTRODUCTION**

The Fresno County Grand Jury received a complaint from the Fresno chapter of a national organization alleging "...deficiencies in policy and practices of the Fresno County Jail (Jail) in the treatment of inmates with mental health issues." The complainant believes the Jail is a treatment facility. They further allege, "...the jail withholds or changes medication for inmates who have been previously diagnosed with a need for a specific psychotropic medication to reduce its operational costs." This alleged action results in substandard treatment including, "...failure to competently diagnose and treat psychotic disorders." It is claimed in the allegation that this practice frequently renders these mentally ill inmates incompetent to participate in their own defense. The complaint also alleges that this practice, "contributes to unnecessary suffering," and is a violation of inmate's constitutional rights under the Eighth Amendment, the right to protection against "cruel and unusual punishment."

## **BACKGROUND**

As the investigation evolved, the analysis of the allegations included a number of complex issues not easily analyzed or summarized within the scope of this investigation. These issues are discussed further in this report. The complaint alleged medical treatment issues beyond the expertise of the grand jury. Issues that may relate to specific inmate diagnosis and subsequent treatment were not evaluated. These allegations would need to be evaluated by the appropriate professional regulatory entity. The Eighth amendment issue is outside the expertise of the grand jury.

## **PURPOSE OF THE INVESTIGATION**

1. Determine if the Jail is a mental health treatment facility.
2. Examine the Jail mental health policies and procedures for inmates.
3. Evaluate the allegation that cost containment is the primary reason in the selection of medication(s) prescribed for jail inmates.
4. Evaluate the allegation of recurring inmate incompetence.

## **DISCUSSION**

The grand jury's investigation included 27 separate interviews with 21 individuals and four facility field trips. The investigation included a review of the written policies and procedures pertaining to mentally ill inmates. The grand jury interviewed the complainant organization's local leadership, appropriate mental health and public health professionals, as well as representatives of law enforcement and the judiciary. Professional journals and local media sources were consulted for background information.

In addition to determining if the Jail is a mental health facility, four key issues surfaced during testimony that added to the complexity of the investigation. These issues include:

1. The relationship between Jail operations and the Department of Public Health (DPH)
2. Alleged abuse of anti-psychotic and antidepressant medications.
3. Frequent diagnosis of malingering.
4. Reduction of group therapy sessions due to budget cuts.

Testimony received by the grand jury clarified differences between an individual held as an inmate in the Jail and the same individual sent to a medical/mental health facility. A Jail inmate may refuse to take prescribed medications. An inmate in a medical facility may also refuse to take a prescribed medication, however the court may issue an order for the involuntary administration of medications.

The determination of whether or not the Jail is a health treatment facility is one of the most important elements of our grand jury report. The allegations by the complainant centered on the quality and extent of mental health care at the Jail. It appears from the allegations that the complainant made the assumption that the Jail is a mental health facility. The results of our investigation disagree with that assumption.

As we delved into the subject and attempted to decipher the laws and regulations which apply, we determined that the Jail is first and foremost, an "incarceration facility" operated by the Fresno County Sheriff's Office (FSO) for the purpose of holding individuals who are awaiting trial or who have been sentenced in a court of law. (See Title 15, California Code of Regulations, Section 1202). The Jail, under these regulations, is required to provide "emergency and basic health care services to all inmates." The Jail provides these services through a contract with the DPH, who operate Jail Medical Services and Jail Psychiatric Services (JPS). Title 15 further specifies, "Medical, dental and mental health matters involving clinical judgment are the sole province of the responsible physician, dentist, psychiatrist or psychologist, respectively."

The Jail's responsibility, by law, is to provide basic and emergency health care, and to maintain written service agreements with local inpatient hospitals to provide care for inmates needing acute or specialized medical (including psychiatric) care (California Health and Safety Code, Section 1250). Our understanding of the intent of the governing California law mandates entities such as the Jail do not and should not provide the same general acute care services as those of a local community or regional hospital. This grand jury believes the Jail is not, by definition, an inpatient health care facility. The Jail's responsibility is to provide basic and emergency health care to all inmates, and to inmates with acute or specialized medical needs, access to inpatient/acute care medical facility.

The second issue was the ongoing problem of abuse of anti-psychotic and antidepressant medications. Quetiapine (Seroquel ®) and Bupropion (Wellbutrin ®) are identified in medical literature as being frequently abused medications in jail settings. According to testimony from JPS, prior to August 2007, abuse of these medications existed in the Jail. Since then, alternative medications are prescribed in place of these drugs, substantially reducing drug abuse in the Jail. The drug formulary of both the State prison system and the Jail do not include Quetiapine, having been removed several years ago. However, it and other medications not normally listed on both formularies are available with specific diagnosis and prescription.

DPH staff supplied data regarding the costs of psychotropic drugs in the Jail. In January 2008, six months after revising the formulary, the costs of drugs were reduced 74.8% for atypical anti-psychotics and 59.8% in overall costs of psychotropic medications. As cited in a published article, "Cost reduction was not the goal, but appeared to be a welcome 'byproduct' of the intervention."

A third issue involves the condition described as malingering. Malingering is a medical term, referring to the fabrication or exaggeration of the symptoms of mental or physical disorders for a variety of "secondary" motives, done for the purpose of a consciously desired end result. *United States v. Binion* speaks to the issue of mental health competency and malingering. Testimony and medical literature revealed malingering is a means to obtain preferred drugs and for inmates to leave the strict confines of a jail or prison for the more relaxed environment of a treatment facility.

The reduction in the frequency of group therapy sessions completes the four issues. The reduction is the result of budget issues, which caused staff cuts. Testimony indicated these group therapy sessions helped inmates cope with incarceration and better prepared them for the judicial process. Additionally, the group sessions are viewed as helpful in assisting inmates to cope with life outside of jail. The group therapy sessions also improved inmate behavior leading to a safer jail environment.

A major component of the grand jury investigation focused on the allegation of withholding or changing medication, resulting in some inmates being found incompetent to stand trial. Inmates are sent to a California State Mental Hospital, primarily Atascadero State Hospital for men and Patton State Hospital for women. The complainant further alleges when competent inmates returned from the State Hospital, medications are changed or withheld, resulting in some inmates relapsing into incompetence. This causes them to return to the State Hospital to again restore competency.

For purposes of this report, competency is defined in the U.S. Supreme Court decision, *Dusky v. United States 1960*, which states the "test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding – and whether he has a rational as well as factual understanding of the proceedings against him."

Listed in the complaint are four individuals. Upon receiving signed 'Release of Information' forms, the grand jury reviewed the medical and mental health records of three of the named individuals. Two of the three were interviewed. Both interviewees asserted they were not aware of their inclusion in the complaint, nor assisted in the preparation of the complaint.

Testimony from both interviewees was evaluated relative to their medical records. The Jail began, in 2008, using real-time drug dispensing software. The dispensing of medications, refusals or "not present" was contemporaneously recorded. The thoroughness of these records allowed the grand jury to ascertain that on numerous occasions, the two interviewees refused their medications when offered. The medical records support the grand jury's conclusions.

Despite repeated requests for specific documentation to support allegations, only the staffs of the FSO, District Attorney Office and the DPH provided actual numerical documentation. These statistics are mutually supportive, although not equal due to the different report date periods. During a 21-month period, ending March 1, 2011, the statistics are:

1. 106 individuals were sent by Fresno Courts to State Hospitals for competency restoration:
  - a. 38 of these individuals have not returned from the State Hospital, either continuing to reside there or were released to other facilities.
  - b. 68 individuals returned from the State Hospitals with competency:
    - i. 30 were subsequently released from custody
    - ii. 15 were sent to prison
    - iii. 16 remain in the Jail as of March 1, 2011
    - iv. 7 were returned to a State Hospital after again being found incompetent to continue to stand trial
2. Of the seven individuals returned to a State Hospital, the staff report noted medication management issues:
  - a. Three refused all medications upon return to the Jail
  - b. One had their medication changed by the physician in the Jail
  - c. One remained on the same medication as used in the State Hospital and was again found incompetent
  - d. One agreed to remain on some of the medications used in the State Hospital, however refused to take the medication 49% of the time
  - e. One was diagnosed by State Hospital physicians as malingering in order to avoid jail; returned to Jail, subsequently found incompetent again, returned to the State Hospital and again found malingering, the cycle being repeated two more times; medication issues were felt to be immaterial as both facilities concluded mental illness was not an issue as the inmate/patient was purposefully feigning symptoms consistent with a malingering diagnosis in an attempt to avoid jail.

## CONCLUSION

The complex issues of mental health in the Jail are a mixture of fact and misperception. The misperception is that mental health diagnosis and treatment is an exact science. It is not an exact science. It is an art *and* a science. Qualified professionals, with good intentions, may disagree on the diagnosis and treatment.

The grand jury received testimony some inmates ask for a specific name brand psychotropic medication, refusing to take the generic version or alternative when provided. Newer generations of medications are frequently more expensive and perceived to be more effective. However, medical literature states older generations of medications may be as effective.

Prescribing issues are further compounded by patented medications going off patent and their generic counterpart being produced.

## **FINDINGS**

- F601 Since diagnosis and treatment of mental illness is imprecise, qualified professionals with good intentions can disagree on a common approach.
- F602 The Jail is a housing facility, not a treatment facility. Mentally disabled or incompetent inmates are referred to a mental health treatment facility.
- F603 The housing of inmates, the services provided, and the interrelationship with the courts, are controlled by constitutional guarantees, legislative mandates, and local policies and procedures.
- F604 Reasonable accommodations to comply with Title 15 are made by Jail personnel. While instances of errors can occur, this grand jury did not find them significant or indicate a pattern or policy of non-compliance with Title 15.
- F605 Jail medical personnel implemented software allowing electronic record keeping and real-time documentation of dispensing medications.
- F606 Treatment of acute mental health issues is an expensive proposition when treated outside Jail confines. Off site treatment requires transportation and could require 24/7 correctional officer supervision constituting inefficient use of resources.
- F607 Frequency of group therapy sessions, conducted by JPS, was reduced due to staff reductions as a result of budget cuts.

## **RECOMMENDATIONS**

- R601 Fresno County Division of Correctional Health will prepare an annual report for review by the Presiding Judge of the Fresno County Superior Court, the Fresno County Sheriff, and the Fresno County Public Health Officer. This report would document the disposition of all mental competency restoration cases sent to California State Mental Hospitals and would follow the format of the report cited within this grand jury report. (F601, F602, F606)
- R602 When medication prescribed at State Hospitals appears to be successful, Jail mental health practitioners should make every effort to consider the rationale, which led to that successful regimen of medication. (F603, F606)
- R603 Provide or establish a psychiatric facility within the Jail consistent with "2008 Jail Facility Needs Assessment Master Plan." (F607)
- R604 Increase the number of group therapy sessions conducted by JPS. (F607)



## REQUEST FOR RESPONSES

Pursuant to Penal Code §933.05, the Fresno County Grand Jury requests responses to each of the specific findings and recommendations. It is required that responses from elected officials are due within sixty days of the receipt of this report and ninety days for all others.

### RESPONDENTS

- Elizabeth Egan, Fresno County District Attorney (F602, F603, R602, R604)
- Margaret Mims, Fresno County Sheriff (F601 – F607, R601 – R604)
- Edward L. Moreno, MD, MPH, Director, and Fresno County Health Officer (F601 – F607, R601 – R604)
- Kenneth K. Taniguchi, Fresno County Public Defender (F602, F603, R602, R604)

### SOURCES AND REFERENCES

- "2008 Jail Facility Needs Assessment Master Plan"
- ACLU: "Eyes on Fresno County Jail Mental Health" flyer
- "A Brief study on recurrence of competency issues in inmates, 06/03/09 to 03/01/11" prepared by Department of Public Health staff
- American Journal of Psychiatry
- California Code of Regulations Title 15
- California Health and Safety Code §1250
- California Welfare and Institutions Code §5325, §5500, §5600
- Dorland's Medical Dictionary
- Drug Information Handbook
- "Formulary Controls: Abuse of Psychotropics and Dispensary Costs in the Incarceration Environment" - George Laird, PhD and Pratap Narayan, M.D., Fresno County Division of Correctional Health
- Forensic Mental Health Association of California, 2009 conference web site
- The Fresno Bee, various articles
- The Journal of Family Practice
- National Institute of Mental Health web site
- Report of 2003 CATIE (Clinical Antipsychotic Trials in Intervention Effectiveness)
- State of California, Department of Corrections and Rehabilitation Form 7230MH (Rev 06/06)
- Various legal web sites
- Various medical web sites, including WebMD

# RESPONSES

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- A. ELIZABETH EGAN,  
Fresno County District Attorney  
R602 and R604
- B. MARGARET MIMS,  
Fresno County Sheriff  
R601 through R604
- C. EDWARD L. MORENO MD, MPH,  
Director and Fresno County Health Officer  
R601 through R604
- D. KENNETH K. TANIGUCHI,  
Fresno County Public Defender  
R602 and R604





County of Fresno  
**Office of the District Attorney**  
Elizabeth A. Egan, District Attorney

July 28, 2011

Honorable Gary D. Hoff  
Presiding Judge  
Fresno County Superior Court  
1100 Van Ness Avenue  
Fresno, CA 93721

Re: Response to the 2010-2011 Fresno County Grand Jury Final Report #6  
*Mental Health Services Provided in the Fresno County Jail*

Dear Judge Hoff:

The Fresno County District Attorney's Office (DA's Office) received Grand Jury Report #6 (Report) on June 1, 2011. The DA's Office does not supervise or control any aspect of mental health services provided by the Fresno County Jail and, therefore, is limited in its ability to respond to the Report.

**Findings**

*Finding F602: The Jail is a housing facility, not a treatment facility. Mentally disabled or incompetent inmates are referred to a mental health treatment facility.*

**A legal determination of whether or not the Jail is a treatment facility and the resulting policies and procedures regarding such a determination is not a matter within the control of the DA's Office.**

**Under various sections of the Penal Code, if a doubt arises as to the mental competence of a defendant or if a defendant is not mentally competent to stand trial, such defendants are referred to a mental health facility. Prior to such referrals, prosecutors from the DA's Office represent the People of the State of California at mental competency court proceedings.**

The Honorable Gary D. Hoff  
RE: Response to the 2010-11 Grand Jury Report #6  
July 28, 2011  
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**The DA's Office does agree with the Report that "[t]he Jail is first and foremost, an 'incarceration facility' operated ... for the purpose of holding individuals who are awaiting trial or who have been sentenced in a court of law." Both of these purposes highlight the essential function of the DA's Office in the judicial system in the filing of criminal cases and the successful prosecution of those cases. Without a prosecution by the DA's Office, no individuals would be held in the Jail for longer than two days.**

*Finding F603: The housing of inmates, the services provided, and the interrelationship with the courts, are controlled by constitutional guarantees, legislative mandates, and local policies and procedures.*

**All aspects of Jail operations are controlled by constitutional guarantees, state and federal courts, state and federal legislative actions, and local policies and procedures.**

Recommendations:

*R602 When medication prescribed at State Hospitals appears to be successful, Jail mental health practitioners should make every effort to consider the rationale, which led to that successful regimen of medication.*

**The DA's Office does not supervise or control Jail mental health practitioners so has no way of implementing this recommendation. Further, the DA's Office does not possess the expertise or any information that would allow for comment on this recommendation. However, it is important to the criminal justice system that defendants maintain their mental competency during criminal proceeding to ensure the prompt and cost effective completion of their case.**

The Honorable Gary D. Hoff  
RE: Response to the 2010-11 Grand Jury Report #6  
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*R604 Increase the number of group therapy sessions conducted by JPS.*

**The DA's Office does not supervise or control Jail Psychiatric Services so has no way of implementing this recommendation.**

This concludes my comments on Final Report #6 of the 2010-2011 Fresno County Grand Jury.

Very truly yours,



Elizabeth A. Egan  
District Attorney

cc: Board of Supervisors  
John Navarrette, County Administrative Officer  
Foreperson, Fresno County Grand Jury



Margaret Mims  
Sheriff  
Fresno County Sheriff's Office

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August 3, 2011

Gary Hoff, Presiding Judge  
Fresno Superior Court  
1100 Van Ness Avenue  
Fresno, California 93724

RE: 2010-2011 FRESNO COUNTY GRAND JURY FINAL REPORT #6

Dear Judge Hoff:

This letter constitutes the response to the 2010-2011 Fresno County Grand Jury Final Report #6 pertaining to Mental Health Services provided in the Fresno County Jail.

### **General Comments**

As the Sheriff of Fresno County, I appreciate the difficult work and efforts of the 2010 – 2011 Fresno County Grand Jury as reflected in their Final Report #6. I want to assure the Grand Jury, yourself, and the citizens of Fresno County that my office and the Jails I am responsible for managing are operated with due consideration to all constitutional rights afforded inmates while in our custody. The Jail is not a mental health treatment facility, however, our collective goal along with that of the Fresno County Department of Health is to provide adequate care that passes muster with the Constitution, Title 15, and all related legal and regulatory requirements.

As such, I am responding to each finding and recommendation as made by the 2010 -2011 Fresno County Grand Jury.

### **FINDINGS**

F601 Since diagnosis and treatment of mental illness is imprecise, qualified professionals with good intentions can disagree on a common approach.

**The Sheriff's Office agrees with Finding F601.**

F602 The Jail is a housing facility, not a treatment facility. Mentally disabled or incompetent inmates are referred to a mental health treatment facility.

*Dedicated to Protect & Serve*

Law Enforcement Administration Building / 2200 Fresno Street / P.O. Box 1788 / Fresno, California 93717 / (559) 488-3121  
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**The Sheriff's Office agrees with Finding F602. Additionally, the Department of Health has Jail Psychiatric Services staff on duty, in the Jail, "normally" 24/7 in order to evaluate both incoming arrestees as well as resident inmates who may be in need of specialized mental health resources. The Sheriff's Office provides the security and the transport staff for Inmates referred to outside treatment facilities, however, the professional assessment services within the Jail are provided by Department of Health staff.**

F603 The housing of inmates, the services provided, and the interrelationship with the courts, are controlled by constitutional guarantees, legislative mandates, and local policies and procedures.

**The Sheriff's Office agrees with Finding F603.**

F604 Reasonable accommodations to comply with Title 15 are made by Jail personnel. While instances of errors can occur, this grand jury did not find them significant or indicate a pattern or policy of non-compliance with Title 15.

**The Sheriff's Office agrees with Finding F604.**

F605 Jail medical personnel implemented software allowing electronic record keeping and real-time documentation of dispensing medications.

**The Sheriff's Office agrees with Finding F605.**

F606 Treatment of acute mental health issues is an expensive proposition when treated outside Jail confines. Off site treatment requires transportation and could require 24/7 correctional officer supervision constituting inefficient use of resources.

**The Sheriff's Office partially agrees with Finding F606, however, feels it necessary to comment further. The Jail is not a mental health treatment facility and its current construction does not provide a suitable environment for dealing with inmates with mental health issues. Inmates with mental health issues also compromise the safety and security of other inmates and staff. While the cost of treating inmates with mental health issues outside of the jail might be expensive, trying to keep them confined within the Jail system without treatment is also not without significant costs. Attempting to deal with inmates that have severe mental health issues is at least doubly problematic within the confines of the current jail facilities, one jail which was originally constructed in 1941. While off site treatment requires transportation and correctional staff supervision, treatment capabilities within the current jail facilities is very limited.**

F607 Frequency of group therapy sessions, conducted by JPS, was reduced due to staff reductions as a result of budget cuts.

**The Sheriff's Office agrees with Finding F607.**

*Dedicated to Protect & Serve*

## RECOMMENDATIONS

- R601** Fresno County Division of Correctional Health will prepare an annual report for review by the Presiding Judge of the Fresno County Superior Court, the Fresno County Sheriff, and the Fresno County Public Health Officer. This report would document the disposition of all mental competency restoration cases sent to California State Mental Hospitals and would follow the format of the report cited within this grand jury report. (F601, F602, F606)

**The Fresno Sheriff's Office agrees and fully supports Recommendation 601.**

- R602** When medication prescribed at State Hospitals appears to be successful, Jail mental health practitioners should make every effort to consider the rationale, which led to that successful regimen of medication. (F603, F606)

**The Fresno Sheriff's Office generally agrees with Recommendation R602, believing that Jail mental health practitioners already do exactly as now being recommended by the grand jury, however, we believe we should defer to the expertise of Dr. Moreno, the Fresno County Health Officer who oversees Jail mental health services.**

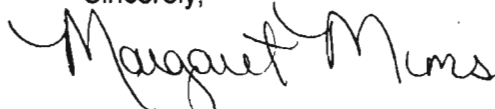
- R603** Provide or establish a psychiatric facility within the Jail consistent with "2008 Jail Facility Needs Assessment Master Plan." (F607)

**The Fresno Sheriff's Office agrees and supports Recommendation R603, if a new facility were to be constructed adjacent and connected to existing Jail facilities. However, it should be noted that current Jail construction does not provide for remodeling of the limited existing Jail space for this purpose. Inmates with significant mental impairments need to be housed in either an Acute and/or Intensive Supervision Psychiatric Housing Unit and not in general jail population cells or housing units.**

- R604** Increase the number of group therapy sessions conducted by JPS. (F607)

**The Fresno Sheriff's Office agrees and fully supports Recommendation R604, if sufficient funding of Health Services can be provided.**

Sincerely,



Margaret Mims, Sheriff

cc: CAO John Navarrette  
Board of Supervisors Members  
2010-2011 Grand Jury Foreman Rod H. Coburn  
County Clerk

*Dedicated to Protect & Serve*





## County of Fresno

**DEPARTMENT OF PUBLIC HEALTH  
EDWARD L. MORENO, M.D., M.P.H.  
DIRECTOR-HEALTH OFFICER**

July 26, 2011

Fresno County Grand Jury  
1100 Van Ness Avenue  
Fresno, CA 93724

Members of the Fresno County Grand Jury:

As you have requested, I am providing responses to the 2010-2011 Fresno County Grand Jury Final Report #6, specific findings and recommendations (F601-F607, R601-R604).

Please contact me should you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Edward L. Moreno', is written over the typed name and title.

Edward L. Moreno, MD, MPH  
Director and Health Officer

ELM:kha

Enclosure: Response to 2010-2011 Fresno County Grand Jury Final Report #6 – Mental Health Services Provided in the Fresno County Jail

Cc: John Navarrette, County Administrative Officer  
George Laird, PhD

***Dedicated to Public Health***

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## County of Fresno

**DEPARTMENT OF PUBLIC HEALTH**  
**EDWARD L. MORENO, M.D., M.P.H.**  
**DIRECTOR-HEALTH OFFICER**

Response to 2010-2011 Fresno County Grand Jury Final Report #6  
- Mental Health Services Provided in the Fresno County Jail –  
Edward Moreno, M.D., M.P.H.  
Director and Health Officer, Fresno County Department of Public Health  
July 20, 2011

### **Response to Findings**

F601 Agree. Research demonstrates that diagnosis and treatment of mental illness is imprecise, and qualified professionals may differ in their approaches. Title 15 of the California Code of Regulations supports the clinical judgment of qualified professionals, stating that, "Medical, dental and mental health matters involving clinical judgment are the sole province of the responsible physician, dentist, psychiatrist or psychologist, respectively."

F602 Agree. The Fresno County Jail is an incarceration facility providing housing to adult inmates. As required by Title 15 and Penal Code 1370, mentally ill Fresno County jail inmates that require acute hospital level of care and inmates that are found incompetent are transferred to mental health facilities.

F603 Agree. Housing and services provided to inmates are mandated and controlled by constitutional guarantees, California Codes, and policies and procedures specific to the facility.

F604 Agree. Title 15 requirements for health care for inmates are met by the jail medical, dental, and psychiatric services.

F605 Agree. Electronic record keeping of medication dispensing was implemented in the jail prior to 2009.

F606 Agree. Treatment of inmates for acute mental illness outside of the jail may require transportation and 24/7 correctional officer supervision. Nevertheless, inmates requiring acute hospital level of care are transferred to a health care facility.

F607 Agree. Reductions in budget and staffing levels starting in 2005 impacted the level of resources available to provide group therapy to inmates in the jail.

### ***Dedicated to Public Health***

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### **Response to Recommendations**

R601 Agree. The Fresno County Department of Public Health, Division of Correctional Health will capture data and provide an annual report on competency restoration cases sent to State Hospitals consistent with the format cited in the grand jury report. The report will be provided to the Presiding Judge of Superior Court, the Sheriff, and the Fresno County Public Health Officer.

R602 Agree. Currently, when State Hospital mental health practitioners prescribe treatment regimens that appear to be successful, Fresno County Jail mental health practitioners consider the rationale of those treatment regimens. Jail mental health practitioners also prioritize these transferred inmates for mental health evaluation. Additionally, when State Hospital mental health practitioners do not provide documentation of clinical rationale, Fresno County Jail mental health clinicians request inmate health records from the State Hospital to better assist the clinical decision-making process.

R603 Support. The 2008 Jail Facility Needs Assessment Master Plan recommends that jail construction include a dedicated acute psychiatric housing unit as part of a multi-stage jail construction project. The Plan also recommends the creation of new mental health step-down housing units. Future jail construction should include new mental health housing units. New jail construction will depend upon available Fresno County resources.

R604 Agree. Although not specifically required by regulation, group therapy sessions focusing on mental health issues improve the mental health of inmates and prepare inmates for successful reintroduction into the community. The Fresno County Department of Public Health, Correctional Health Division will continue to enhance group therapy to the extent that resources allow, and to the extent that security permits. Correctional Health Division staff will document inmate referrals to group therapy and monitor inmate response to therapy.

***Dedicated to Public Health***



August 1, 2011

The Honorable Gary Hoff  
Presiding Judge  
Fresno County Superior Court  
1110 Van Ness  
Fresno, CA 93721

RE: Response to 2010-2011 Fresno County Grand Jury Final Report #6 –  
Mental Health Services Provided in the Fresno County Jail

The Public Defender's Office thanks the Grand Jury for their investigation into the services required for our clients in the Fresno County Jail. The requested responses are as follows:

**Findings**

**F602 The Jail is a housing facility, not a treatment facility. Mentally disabled or incompetent inmates are referred to a mental health treatment facility.**

We agree with the findings.

**F603 The housing of inmates, the services provided, and the interrelationship with the courts, is controlled by constitutional guarantees, legislative mandates, and local policies and procedures.**

We agree with the findings.

**Recommendations**

**R602 When medication prescribed at State Hospitals appears to be successful, Jail mental health practitioners should make every effort to consider the rationale, which led to that successful regimen of medication.**

We concur with the recommendation.

**R604 Increase the number of group therapy sessions conducted by the JPS.**

We concur with the recommendation.

Respectfully,

Kenneth K. Taniguchi  
Fresno County Public Defender

# REPORT #7

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**CITY OF FRESNO — IS THE  
“OFFICE OF INDEPENDENT REVIEW”  
RELEVANT IN ITS CURRENT FORM?**



**FILED**

JUN 21 2011

FRESNO COUNTY SUPERIOR COURT

By \_\_\_\_\_ DEPUTY

**2010-2011  
FRESNO COUNTY GRAND JURY**



**FINAL REPORT**

**#7**

**Fresno County  
2010 – 2011 Grand Jury  
Report # 7**

**City of Fresno -  
Is the “Office of Independent Review” relevant  
in its current form?**

---

*“...To recognize the power of the police to fulfill their functions and duties is dependent on public approval of their existence, actions and behavior, and on their ability to secure and maintain public respect.” Sir Robert Peel, 1829*

**INTRODUCTION**

The Fresno County Grand Jury became aware of the duties and responsibilities of the City of Fresno Office of Independent Review (OIR) during the course of the investigation of Officer-Involved Shootings (2010 - 2011 Grand Jury Report #2). The OIR's mission is clear in the written description of the Office; however, the public's perception of the OIR seems to indicate a lack of understanding of its function and authority.

**BACKGROUND**

After more than a decade of community debate, the City of Fresno established an OIR in 2009, “to enhance community trust by providing independent and objective review of police complaint investigations that will help strengthen community policing relations.” Subsequently, the Fresno County District Attorney (DA) decided to discontinue investigating peace officer-involved shootings, citing budget constraints as well as the establishment of the OIR. The Fresno County Grand Jury examined the impact of the DA's decision and concluded that the DA's office played a critical function on behalf of the community by providing an impartial investigation of officer-involved shootings (OIS) and in-custody deaths (ICD), subjects which generate a great deal of interest and concern among Fresno's citizens. The grand jury's Report #2 urged the DA's office to reconsider its decision, citing, among other issues, the lack of investigative power of the OIR.

The concept of an independent police auditor/reviewer was the subject of a 2006 - 2007 Fresno County Grand Jury Report #2. That grand jury concluded, “the weight of the evidence supported establishment of an independent police auditor in Fresno.” In that report the grand jury cited Fresno as the largest city of California without an independent reviewer/auditor of its police department.

The 2010 - 2011 Fresno County Grand Jury began an inquiry into the purpose and effectiveness of the OIR. The first and current Independent Reviewer for the City of Fresno has been in place since December 2009. The grand jury delayed the writing of this report until the end of its term in hopes that it would have information from the OIR Annual Report for the year ending in December 2010. However, as of June 7, 2011, the Report had not been published.

As background, the grand jury studied the Policy Proposal for the OIR and the resolution authorizing its formation, which was approved by the Fresno City Council on March 24, 2009. Three components of the Office are reiterated in both documents and are worth highlighting:

- Independence
- Transparency
- Review

Key points in the establishment of the OIR:

- In accordance with the City Charter and Resolution No. 2009-66, the OIR reports to the City Manager, not the Mayor, City Council, nor the Chief of Police.
- Be responsible for auditing completed investigations conducted by Internal Affairs; reviewing inquiry forms and complaint logs.
- "Will not conduct its own independent investigations of citizen complaints or allegations of police misconduct..."
- Identify and monitor trends and serve as a resource for both the Police Department and the community.
- Produce an annual report to provide transparent and accurate information about the overall performance of the police department.
- City Manager and Police Chief ensure remedial responses are undertaken to address operational deficiencies noted by the OIR.

## **PURPOSE OF THE INVESTIGATION**

1. Evaluate the perception of the OIR relative to the reality of the position.
2. Determine if cost of the OIR is justified.

## **DISCUSSION**

In 2005, the City of Eugene, Oregon commissioned a study by the Police Assessment Resource Center (PARC), a non-profit national policy research company based in Los



Angeles, CA., whose advisory board consists of some of the most experienced Police Chiefs from across the country. The study was designed to assist the City of Eugene in reviewing the "best practices" models of police oversight entities. In compiling their report, PARC outlined the three major models being implemented in communities across the nation.

These three models are:

1. Review and Appellate Model - Review cases after the law enforcement agency (Internal Affairs) has completed an internal investigation of a citizen's complaint or officer-involved shooting, for instance. These entities can only review the completed file and cannot conduct independent investigations or hearings, or subpoena witnesses or documents.
2. Investigative and Quality Assurance Model – Removes investigatory powers from the Police Department to an independent entity, under the assumption that unregulated internal police investigations are often biased or untrustworthy.
3. Evaluative and Performance-Based Model – Focuses on analyzing the systems and policies of the Police Department, does not investigate or review specific cases; its main concern is accountability through systemic reform.

The City of Fresno selected the "Review and Appellate Model" in assembling its Office of Independent Review. The most crucial element of this model is the Police Auditor has no investigatory power; it can only review the results of the Internal Affairs investigations, which include officer-involved shooting incidents.

During interview testimony, it became obvious that there is a great deal of misperception regarding OIR's authority. City leaders who were involved in the vote establishing the OIR voiced conflicting views as to what the OIR's powers. Not surprisingly, those misperceptions extend to the public's perception of the OIR's role and responsibilities. The results of a public opinion survey conducted on behalf of the OIR in April of 2010 indicated that 63% of City residents felt that the OIR would improve the level of service at the Fresno Police Department. However, there was no indication in the survey citizens were fully aware of the OIR's role or was the question asked.

Public accessibility to the OIR is difficult. Access to the OIR information is through the City Manager's web page within the City of Fresno website. Most citizens would not instinctively go to the City Manager's web page to search for the OIR.

## **CONCLUSION**

The Fresno Office of Independent Review appears to be a symbolic attempt by City leaders to demonstrate to the public that an unbiased, independent review body monitors police activities. In reality, the OIR has no authority to conduct an independent investigation; it merely reviews completed Police Department internal investigations. As

a result of the decision by the DA's office to discontinue their investigation of officer-involved shootings and in-custody deaths, there is no independent oversight.

In this era of budget constraints, City leaders must evaluate whether the "symbolic" value of the OIR to the community warrants its continued funding.

## **FINDINGS**

- F701 The City of Fresno adopted the "Review and Appellate Model," which prohibits the OIR from independent investigations of the Fresno Police Department.
- F702 The OIR is not a substitute for District Attorney investigations of officer involved shootings and in-custody deaths.
- F703 The mandated 2010 annual OIR report is unconscionably late. Thus, preventing decision makers the OIR's timely and transparent observations about the overall performance of the police department.
- F704 The OIR Internet web page is difficult to locate.
- F705 Citizen's complaints made through the City Manager/OIR website are forwarded to the Fresno Police Department's Internal Affairs for investigation and not to the OIR.

## **RECOMMENDATIONS**

- R701 As the DA does not investigate OIS/ICD incidents; it is crucial the OIR be given the authority to conduct its own independent investigation with the power to subpoena. (Investigative and Quality Assurance Model). (F701, F702)
- R702 Without authorization to independently investigate complaints, cease funding the OIR. (F701, F702)
- R703 If OIR remains, revise their website to allow ease of accessibility and streamline the process to obtain and file complaint forms. (F704, F705)
- R704 Publish all reports in a timely manner. (F703)

## **REQUEST FOR RESPONSES**

Pursuant to Penal Code §933.05, the Fresno County Grand Jury requests responses to each of the specific findings and recommendations. It is required that responses from

elected officials are due within sixty days of the receipt of this report and ninety days for all others.

## RESPONDENTS

- Eddie J. Aubrey, Independent Reviewer (F701 – F705, R701 – R704)
- Fresno City Council (F701 – F705, R701 – R704)
- Jerry Dyer, Fresno Police Chief (F701 – F705, R701 – R704)
- Elizabeth Egan, Fresno County District Attorney (F701 – F705, R701 – R704)
- Mark Scott, Fresno City Manager (F701 – F705, R701 – R704)
- Ashley Swearingin, Mayor, City of Fresno (F701 – F705, R701 – R704)

## SOURCES AND REFERENCES

- 2010-2011 Grand Jury Report #2
- The Fresno Bee
- "Fresno Police Department Citizen Satisfaction Study Executive Summary," Wilson Research Strategies, May 11, 2010
- "Grand Jury Report #2: A Police Auditor--Assuring Transparency," 2006-2007 Fresno County Grand Jury Report
- The Los Angeles Times
- Interview with a representative of the Central California Criminal Justice Committee
- Interview with a former Member of the City of Fresno Council
- Interviews with various City of Fresno officials
- Interviews with representatives of the Fresno County District Attorney's Office
- Interviews with various members of the Fresno Police Department
- Interview with a member of the Fresno Police Officers Association
- Minutes of Fresno City Council Meeting, March 24, 2009
- National Association for Civilian Oversight of Law Enforcement
- "Nine Principles of Policing," Sir Robert Peel, 1829
- "Office of Independent Review, 2010 Mid-Year Report," Office of Independent Review, City of Fresno
- "The Police Policy Studies Council"
- "Policy Proposal for the Office of Independent Review" Office of the Mayor, City of Fresno, California, 2009
- "Resolution No. 2009-66, Establishing the Office of Independent Review," City Council, City of Fresno, March 24, 2009
- "Review of National Police Oversight Models for the Eugene Police Commission," Police Assessment Resource Center, February, 2005

# RESPONSES

---

- A. EDDIE J. AUBREY,  
Independent Reviewer  
R701 through R704
- B. FRESNO CITY COUNCIL,  
R701 through R704
- C. JERRY DYER,  
Chief of Police, Fresno Police Department  
R701 through R704
- D. ELIZABETH EGAN,  
Fresno County District Attorney  
R701 through R704
- E. MARK SCOTT,  
Fresno City Manager  
R701 through R704
- F. ASHLEY SWEARENGEN,  
Mayor, City of Fresno  
R701 through R704



September 15, 2011

Eddie J. Aubrey  
Independent Reviewer (Former)  
Office of Independent Review

Presiding Judge, Fresno County Superior Court  
FY 2010-2011 Fresno County Grand Jury  
1100 Van Ness Ave.  
Fresno, California 93724-0002

## **INTRODUCTION**

This letter is in response to the 2010-2011 Fresno County Grand Jury Final Report # 7 posted on June 21, 2011. I am responding as a citizen respondent listed in the report who was previously the Independent Reviewer (IR) for the Office of Independent Review (OIR) when the report was issued. The City of Fresno decided not to fund the OIR (due to the City's budget crisis/shortfall) prior to the completion of Report # 7 and on June 30, 2011 discontinued funding the OIR, leaving IR and Executive Assistant unemployed.

## **BACKGROUND OF OFFICE**

The report discusses whether the office was a "symbolic" effort or value to the community. Because of the untimely and transparent release of completed audit reports and annual report from the City, it may appear "symbolic" when in fact if such information were released, it would prove otherwise. Given that, a historical review of the establishment of the office may prove enlightening.

The staffing of the OIR was to include three full time employees: (1) the Independent Reviewer, (2) a Community Outreach Specialist, and (3) an administrative assistant. When the office opened in November 2009, it was staffed by the IR and a part-time assistant shared with another Department physically located in another part of the city. It was not until July 2010, that a full-time assistant was moved from another department to the OIR. Since the inception of the office, it has done without the critical position of Community Outreach Specialist.

The Community Outreach Specialist would be responsible for informing and educating members of the community about the existence of the OIR, make presentations, and solicit suggestions on strengthening the partnership between the community and the police. Additionally, the Community Outreach Specialist

would provide customer service to constituents as they access the OIR and produce the annual report.

It could be perceived that the lack of committing full funding of the office from the very beginning was “symbolic”, but this would not have been perceived if the release of completed audit reports and annual report by the City was done timely, transparently, and independent.

As related with the differing models, the one chosen by the City employs the IR who reports to the City Manager. This model was chosen to ensure departmental cooperation, access to records and employees, reinforces the City’s unity of command. It does not address the inherent conflict of true independence of “independent judgment, free of any real or perceive bending to the wishes of any stakeholders”.

A more robust and independent model would be the reporting of the IR to a police oversight committee or city council and allow public discussion on issues. This also provides a model that allows the committee or council to hold the IR responsible and not one person, without public discussion or committee approval. This also would follow the resolution that states, “It is critical that the IR be independent and non-political”.

## DISCUSSION

The report discusses the three models of police oversight. While there are debates and discussions on which model provides the oversight necessary for the City of Fresno, in all cases, police oversight must be independent and transparent and done with complete fairness, integrity and honesty. The resolution establishing the office specifies these concepts in the “Key Principles”.

Independence: “Independence is essential to the OIR’s role. The IR must exercise independent judgment, free of any real or **perceive** bending to the wishes of **any** stakeholders.” (emphasis added)

Transparency: “...the IR’s **own work product** must be available to the community, to the extent permitted by law.” (emphasis added)

Fairness, Integrity and Honesty: “The IR must be impartial in word and deed, **process and results**. (emphasis added)

In order to enhance public trust, the IR’s work product must be made available to the public in a timely manner, without alteration or editing, independent of stakeholders in or out of city government.

The 2010 completed annual report was submitted to the City in April 2011. Additionally, audit reports including officer-involved shooting audit reports and recommendations were submitted in April 2011. The annual public confidence survey was conducted and the results were provided to the City in May 2011. All reports were verified and submitted in compliance with confidentiality laws and the Peace Officer Bill of Rights. The audit reports, recommendations, annual report and public confidence report from 2011 are of important significant magnitude.

As the GJ report #7 indicates, as of June 7, 2011, the City has not published the annual report or any of the other reports. As of the writing of this response letter (September 2011), none of these materials have been released to the public in original form or in any other manner. Unfortunately, the OIR could not release the annual report because the resolution states, "The OIR will produce an annual report that will be transmitted, through the City Manager..."

Additionally, the resolution states, "...the City Manager and Police Chief will ensure adequate remedial responses are undertaken to address operational deficiencies noted by the OIR". Any remedial responses, if undertaken, have not been provided to the public, as is best practice throughout police oversight in what is usually a response report to the recommendations by police oversight officials.

To accomplish true independence, transparency, fairness, integrity, honesty, and to enhance public trust, all of the OIR's reports, including the annual report, should be released to the public in a timely manner, unaltered, and free from any perceived bending by any stakeholder.

## **RESPONSE TO FINDINGS**

F701 Agreed

F702 Agreed and stated in the OIR's mid-year report in September 2010.

F703 The IR submitted the completed 2010 annual OIR report in April 2011 and as of September 2011 the City has not released this report or any audit reports (including officer-involved shooting audits) or public confidence survey reports to the public.

F704 Agreed. The OIR web page should be independent of the City's website.

F705 Agreed.

## RECOMMENDATIONS

R701 Agreed, but only with sufficient support staff and funding.

R702 Disagree, significant information and recommendations within the annual report, public confidence survey, and audit reports would support the continued funding of the OIR.

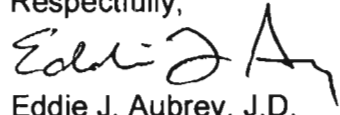
R703 Agreed, the website should be independent of the City's.

R704 Agreed, the reports should be independently published by the OIR.

## CONCLUSION

I am hopeful that this information is useful to you as well as the citizens of Fresno.

Respectfully,

A handwritten signature in black ink, appearing to read "Eddie J. Aubrey". The signature is stylized and cursive, with a prominent "A" at the end.

Eddie J. Aubrey, J.D.





**MAYOR ASHLEY SWEARENGIN**

September 15, 2011

The Honorable Gary D. Hoff  
Presiding Judge  
Fresno County Superior Court  
1100 Van Ness Avenue  
Fresno, California 93724-0002

Re: Responses to Grand Jury Final Report #7 2010-2011

Dear Judge Hoff:

We appreciate the opportunity to respond to the Grand Jury's Final Report #7 regarding the City of Fresno's Office of Independent Review. Following you will find our required response to your report. Please note that we are in receipt of your September 13, 2011 letter to the Mayor indicating that she was required to respond to the Grand Jury within 60 days. We must respectfully disagree with this interpretation of the Penal Code. Our City Attorney advises us that the Mayor's response is due within 90 days as the Mayor is not an "elected county officer" that is subject to the 60 day response.

Pursuant to the Grand Jury's request, the Respondents offer the following responses to F701-F705:

- F701:** The City of Fresno adopted the "Review and Appellate Model," which prohibits the OIR from independent investigations of the Fresno Police Department.
- Response:** Respondents agree with this finding.
- F702:** The OIR is not a substitute for District Attorney Investigations of officer involved shootings and in-custody deaths.
- Response:** Respondents agree with this finding.

**F703:** The mandated 2010 annual OIR report is unconscionably late. Thus, preventing decision makers the OIR's timely and transparent observations about the overall performance of the police department.

**Response:** Respondents agree that the 2010 annual OIR report is late. Respondents disagree that this has prevented decision makers the OIR's timely and transparent observations about the overall performance of the police department. The OIR reported to the City Manager and met regularly with the City Manager. Thus, the decision maker of the organization was provided regular observations regarding the police department.

**F704:** The OIR Internet web page is difficult to locate.

**Response:** Respondents agree with this finding.

**F705:** Citizen's complaints made through the City Manager/OIR website are forwarded to the Fresno Police Department's Internal Affairs for investigation and not to the OIR.

**Response:** Respondents agree with this finding.

Pursuant to the Grand Jury's request, the Respondents offer the following responses to R701-F704:

**R701:** As the DA does not investigate OIS/ICD incidents; it is crucial the OIR be given the authority to conduct its own independent investigation with the power to subpoena

**Response:** Respondents will not implement this recommendation. The establishment of the "Review and Appellate Model" of the Office of Independent Review was carefully reviewed and debated in a public forum. After extensive public input and consideration the Administration submitted and the City Council approved the formation of the Office of Independent Review in its current form. Respondents believe it is more appropriate for the DA to return to its historical practice of investigating OIS/ICD incidents.

**R702:** Without authorization to independently investigate complaints, cease funding the OIR.

**Response:** Respondents will not implement this recommendation. Respondents believe the Review and Appellate Model is the appropriate model for the City of Fresno. Respondents do not believe the OIR should have the authority to independently investigate complaints. Having said that,

funding for the OIR has been suspended for the fiscal year due to budgetary constraints.

**R703:** If OIR remains, revise their website to allow ease of accessibility and streamline the process to obtain and file complaint forms.

**Response:** This recommendation has not yet been implemented but will be implemented in the future. When the City's budget improves and the OIR is funded, the accessibility of the website and complaint process will be revised.


**R704:** Publish all reports in a timely manner.

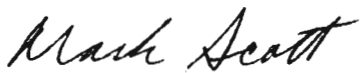
**Response:** This recommendation has not yet been implemented but will be implemented in the future. When the City's budget improves and the OIR is funded, the City Manager will require the OIR to publish reports in a timely manner.

The Fresno City Council concurs with these responses and did so by taking action at its September 15, 2011 meeting and has authorized the Council President to sign this response.

We appreciate the Grand Jury's interest in the issue of the Office of Independent Review. If you have any questions, please feel free to contact Mayor Swearingin's office at 621-7900 or City Manager Mark Scott's office at 621-7770.

Sincerely,

  
Ashley Swearingin, Mayor

  
Mark Scott, City Manager



Lee Brand, Council President  
Fresno City Council



REC'D  
RHF 8/3/11

Police Department

Mariposa Mall  
P.O. Box 1271  
Fresno, CA 93715-1271

Jerry P. Dyer  
Chief of Police



June 28, 2011

Rod H. Coburn, D.D.S. Foreman  
Fresno County Grand Jury  
1100 Van Ness Avenue  
Fresno, CA 93724-0002

Re: Response to Grand Jury Report Final Report #7  
"Is the Office of Independent Review relevant in its current form"

Dear Mr. Coburn:

We appreciate the opportunity to reply to the Grand Jury's Final Report #7 2010-2011. Pursuant to Penal Code 933.05, I am responding to Findings F701- F705 and Recommendations R701-R704.

**F701: The City of Fresno adopted the "Review and Appellate Model," which prohibits the OIR from independent investigations of the Fresno Police Department.** The "Review and Appellate Model was approved by the Fresno City Council on March 29, 2009, subsequent to a recommendation by Mayor Ashley Swearingin and myself. The concept of an Independent Police Auditor was studied and debated in Fresno for over ten years. The input, intense deliberation and study of other agencies led to the development of the model tailored for Fresno's specific needs and circumstances, ultimately adopted by council.

**F702: The OIR is not a substitute for District Attorney investigations of officer involved shootings and in-custody deaths.** The OIR was never intended to take the place of the District Attorney in regards to the investigation of Officer Involved Shootings. In fact, I have written the District Attorney explaining the importance of their external and objective review and how vital it had been in our ability to maintain community confidence. I also pointed out that the OIR's focus has always been on the administrative aspect of the investigation; not the criminal. When the District Attorney indicated they would not respond at all, I asked that they at least consider responding to fatal Officer Involved Shootings or should there be a potential for public outcry. My request was denied.

**F703: The mandated 2010 annual OIR report is unconscionably late. Thus, preventing decision makers the OIR's timely and transparent observations about the overall performance of the police department.** We concur that the more timely the OIR annual report is, the greater the opportunity to address systemic flaws and to enhance department performance.

**F704: The OIR Internet web page is difficult to locate.** In reviewing the City of Fresno website, we were able to find the OIR's web page with little difficulty. We agree, however, that the OIR webpage would be more easily located by members of the public, if placed on the front page of the City of Fresno website; rather than through the City Manager's web page.

**F705: Citizen's complaints made through the City Manager/OIR website are forwarded to the Fresno Police Department's Internal Affairs for investigations and not to the OIR.** It is correct that complaints made to the OIR website are forwarded to Internal Affairs; not the OIR. This information flow was intentional, since citizen complaints must be immediately sent to Internal Affairs for internal logging, investigation and tracking. Members of Internal Affairs are responsible for ensuring follow-up with the complaining party occurs. The OIR, however, maintains the ability to monitor the progress of all complaints, received through his office and otherwise.

**R701: As the DA does not investigate OIS/ICD incidents; it is crucial the OIR be given the authority to conduct its own independent investigation with the power to subpoena.** The "Review and Appellate Model", approved by council, did not provide for independent investigation or power to subpoena. As stated previously, the concept was considered for over a decade. The numerous and varied discussions that took place over this extended period of time led to the OIR model currently in place. We believe this format is best suited for the unique needs of the City of Fresno. That said, the Mayor and City Manager have offered funding to the District Attorney to allow for future responses by her office to officer involved shooting incidents.

**R702: Without authorization to independently investigate complaints, cease funding the OIR.** The recommendation to provide the OIR with the ability to independently investigate or cease to be funded should be considered by the Mayor, City Manager and City Council, with input from the Police Chief.

**R703: If OIR remains, revise their website to allow ease of accessibility and streamline the process to obtain and file complaint forms.** We agree the OIR webpage would be more easily located if placed on the front page of the City of Fresno website. We are available to provide ideas for streamlining the process to obtain and file complaints.

**R704: Publish all reports in a timely manner.** We agree that OIR reports should be published in a timely manner.

Again, we thank the members of the Fresno County Grand Jury for examining this very important topic and for providing us the opportunity to respond.

Respectfully submitted,

  
JERRY P. DYER  
Chief of Police



**County of Fresno**  
**Office of the District Attorney**  
**Elizabeth A. Egan, District Attorney**

August 18, 2011

Honorable Gary D. Hoff  
Presiding Judge  
Fresno County Superior Court  
1100 Van Ness Avenue  
Fresno, CA 93721

Re: Response to the 2010-2011 Fresno County Grand Jury Final Report #7  
*City of Fresno - Office of Independent Review*

Dear Judge Hoff:

On June 21, 2011, the Fresno County District Attorney's Office (DA's Office) received Grand Jury Report #7 (Report). The DA's Office does not supervise or control any aspect of the City of Fresno's Office of Independent Review (OIR) and, therefore, is limited in its ability to respond to the Report.

On March 30, 2011, the DA's Office responded to the findings and recommendations that were within its supervision and control in the 2010-2011 Grand Jury Report #2 regarding officer-involved-shootings/in custody deaths (OIS/ICD) incidents in the County of Fresno.

The DA's Office does appreciate the Grand Jury's interest in the independent review of OIS/ICD incidents. The DA's Office shares that interest and continues to seek the restoration of resources through the Board of Supervisors and County Administrative Office which will enable the DA's Office to once again investigate OIS/ICD incidents countywide.

**Findings**

*Finding F701: The City of Fresno adopted the "Review and Appellate Model," which prohibits the OIR from independent investigations of the Fresno Police Department.*

**The OIR was established by the Fresno City Council after allowing for a public debate of all relevant issues. The OIR is not within the supervision or control the DA's Office.**

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*Finding F702: The OIR is not a substitute for District Attorney investigations of officer involved shootings and in-custody deaths.*

**The DA's Office continues to investigate OIS/ICD incidents that are referred for prosecution.**

*Finding F703: The mandated 2010 annual OIR report is unconscionably late. Thus, preventing decision makers the OIR's timely and transparent observations about the overall performance of the police department.*

**Utilizing a direct and open line of communication, the DA's Office continues to work collaboratively with Fresno Police Department on issues of public safety.**

*Finding F704: The OIR Internet web page is difficult to locate.*

**The DA's Office has not experienced any issues with the OIR Internet web page.**

*Finding F705: Citizen's complaints made through the City Manager/OIR website are forwarded to the Fresno Police Department's Internal Affairs for investigation and not to the OIR.*

**The internal policies and procedures of a city, absent criminal conduct, are not matters within the supervision or control of the DA's Office.**

Recommendations:

*Recommendation: R701 As the DA does not investigate OIS/ICD incidents; it is crucial the OIR be given the authority to conduct its own independent investigation with the power to subpoena. (Investigative and Quality Assurance Model). (F701, F702)*

**The DA's Office continues to investigate OIS/ICD incidents for violations of the law that are referred for criminal prosecution. The lack of authority to conduct criminal investigations of OIS/ICD incidents will exist in any community police oversight model or form. A police oversight entity can only conduct an investigation into whether the policies and procedures of a law enforcement agency were followed in an OIS/ICD incident.**

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*Recommendation R702: Without authorization to independently investigate complaints, cease funding the OIR. (F701, F702)*

**A community police oversight entity can only review whether the policies and procedures of a law enforcement agency are followed. It is a matter for each city to decide how to provide this oversight of their police department.**

*Recommendation R703: If OIR remains, revise their website to allow ease of accessibility and streamline the process to obtain and file complaint forms. (F704, F705)*

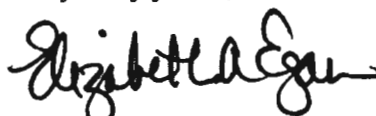
**The DA's Office has not encountered any problems with the OIR website or the processes set up by the City of Fresno.**

*Recommendation R704: Publish all reports in a timely manner. (F703)*

**The DA's Office is aware that the budgets of many city and county agencies are facing difficult fiscal issues that have resulted in a loss of available resources. Budget cuts in many governmental agencies have adversely affected their ability to promptly provide many services.**

This concludes my comments on Final Report #7 of the 2010-2011 Fresno County Grand Jury.

Very truly yours,



Elizabeth A. Egan  
District Attorney

cc: Board of Supervisors  
John Navarrette, County Administrative Officer  
Foreperson, Fresno County Grand Jury