

Tuolumne County 2012 – 2013 Civil Grand Jury Report



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Chuck Giordano

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2012-2013 Tuolumne County Civil Grand Jury

Jury Foreman

Jay A. Carter, Twain Harte

Jury Foreman Pro Tempore

Karen J. Caldwell, Sonora

Jury Secretary

Susan (Suzi) M. Crise, Twain Harte¹
Charlotte A. Frazier, Sonora

Jury Members

Ronald C. Boyd-Snee, Jamestown*
Kristine L. Donschikowski, Sierra Village
Steven D. Gaither, Sonora*
Charles (Chuck) E. Giordano, Sonora*
Erin D. Gold, Sonora*
Robert (Tom) Griffiths, Sonora
Kari L. Hartzell, Sonora
Earlene A. Keller, Sonora
Susan (Susz) J. Lay, Sonora*
Charles (Charlie) A. Mallory, Columbia*
Tracie L. Moore-Hazelwood, Twain Harte¹
Earl L. Morey III, Jamestown
Catherine (Cathie) Peacock, Long Barn*
George E. Sapp, Sonora
Timothy (Tim) Shanahan, Groveland*
Leroy Ulfer, Jamestown
Rosemarie J. Wingo, Twain Harte

* denotes committee Chairperson

¹ denotes Juror who resigned prior to end of term



Grand Jury

Physical Address:

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Mailing Address:

2 South Green Street, Sonora, CA 95370
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June 20, 2013

The Honorable Eleanor Provost
Superior Court of Tuolumne County
60 North Washington Street
Sonora, CA 95370

Dear Judge Provost,

In compliance with Penal Code §933(a), the 2012-2013 Tuolumne County Grand Jury is pleased to present its Final Report. This report represents the work of nineteen Civil Grand Jury members who spent a year dedicated to fulfilling their mission of service to the Court and citizens of the County. The Mission Statement developed by the 2012-2013 Tuolumne County Grand Jury is as follows:

The mission of the 2012/13 Tuolumne County Grand Jury is to serve as an independent investigative body to help local government be more efficient and responsive to the citizens of Tuolumne County. We will accomplish this by providing a high quality, impartial, and factual report that includes realistic recommendations for improving efficiencies and effectiveness of government agencies.

The members of the Tuolumne County Grand Jury (hereafter referred to as the Jury) believes we have successfully met our mission and dedicated many hours of personal time to fulfill our obligations as specified in the oath of office. We came from varied walks of life and backgrounds, yet worked diligently together in various committees and groups. Through our roles as individuals, committee members and plenary members we accomplished the following:

- Considered all citizens' complaints received during our tenure.
- Generated and debated the merits of investigating 17 different areas of County government and policy making before deciding to focus our resources on the 10 topics contained in this report.
- Completed evaluation of the conditions and management for 3 separate detention facilities (pursuant to California Penal Code §919).
- Reviewed documents, contracts, policies, procedures and financial information.
- Visited sites and conducted interviews.

On behalf of the entire Grand Jury, I sincerely thank you for your support and guidance throughout the year. I would also like to express thanks and gratitude to the many individuals, agency employees and elected officials who took time to assist the Jury. Most importantly, I would like to thank the individual members of the 2012-2013 Tuolumne County Grand Jury for their hard work, resiliency and dedication to our mission. It is in this spirit that we offer our report and strongly encourage every citizen of Tuolumne County to review the Civil Grand Jury's findings, recommendations, and responses from their public officials.

It has been an education, a privilege and an honor for each of our members to serve on the 2012-2013 Tuolumne County Civil Grand Jury. Thank you for the opportunity.

Jay Carter

Jay Carter,
Tuolumne County Grand Jury Foreman, 2012 - 2013

How To Respond To Recommendations In This Report

Pursuant to California Penal Code §933.05, the person or entity responding to each Grand Jury finding shall indicate one of the following:

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

The person or entity responding to each Grand Jury recommendation shall report one of the following actions:

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

SEND ALL RESPONSES TO:

**Honorable Judge, Donald Segerstrom
Tuolumne County Superior Court
60 North Washington Street
Sonora, CA 95370**

All responses for the 2012 – 2013 Tuolumne County Grand Jury Final Report's recommendations must be submitted to the above address on or before the end of business on October 1, 2013.

Introduction to the Tuolumne County Civil Grand Jury

Introduction

The Tuolumne County Grand Jury is a “civil” jury and is charged with representing the citizens of Tuolumne County as overseers of the activities of local government: county, city, school districts, special districts and joint powers. The Grand Jury is not impaneled to investigate potential criminal behavior which might lead to a criminal indictment.

The body of the Grand Jury is composed of nineteen (19) volunteers selected from within the County using voter registration roll or drivers' license applications and renewals. The Superior Court of Tuolumne County also maintains acceptable alternate volunteers, who may be sworn in should a current sworn juror become unable to serve. In the juror selection process, the supervising judge does due diligence to impanel a jury that represents a diversity of men and women from different socioeconomic, ethnic, age, educational background and geographical areas of the County. The term of the Grand Jury is one year, which begins in July and ends in June.

During the term, the Grand Jury may:

- Establish functional committees that define areas of possible investigation. These County functional areas might be Criminal Justice, Special Districts, Finance, Development or Regulatory, Human Services and Community Service. The only investigative requirement for the Grand Jury, by law, is the county jail and California State prison, both located within Tuolumne County.
- Determine areas of investigation and get full Jury approval by super majority. The areas for investigations may include formalized complaints correctly submitted by the citizens of Tuolumne County that do not imply potential illegal activities.
- Conduct investigations by analyzing work preformed, interviewing department directors and employees, researching on topics and seeking legal opinions using the office of the District Attorney. In a gathering of information, the focus is on the accuracy of the data and source.
- Analyze the facts gathered into a cohesive presentation where the conclusions can be stated in findings and recommendations on the issues.
- Meet with the head of the agency being investigated to ensure that the facts gathered by the Grand Jury, during the interviews, are accurate.
- Write a final report on each topic and get the approval of the full Jury and have the report reviewed by the superior court judges for legal correctness.
- Issue the Final Reports to the County.

The Grand Jury annually issues a final report which contains several reports addressing one or more issues. California Penal Code § 933 requires responses from governing agencies, including the Board of Supervisors, city and county governments, schools, special districts and certain nonprofit corporations. This ensures that their functions are performed in a lawful, economical and efficient manner. Each report contains information such as the background regarding the subject matter, reasons for the investigation, the procedures followed in obtaining information, findings, conclusions, and recommendations. All required responders must reply, in writing, to each finding and recommendation in the specific report within a given time period.

Investigation Selection and Approach

There are seventeen (17) major departments reporting to the County's Chief Administrator, twelve (12) school districts, and seventeen (17) special districts, and each of these has the potential for review by a sitting Grand Jury. Only the two detention facilities, Tuolumne County Jail and Sierra Conservation Center, are required for annual review as set by California law. To meet the commitment to the citizens to oversee local government, the Grand Jury's scope is large in considering subjects of investigations.

To aid the Grand Jury, past investigations are recorded in the Grand Jury Investigations Matrix (Exhibit 1). This matrix is used to determine if a Tuolumne County agency has not been investigated in recent years. There is the possibility that a current issue within the County, that has reached the citizens through the news media, may be able to be clarified by a Grand Jury review, and that issue may be selected for investigation. Citizen Complaints, submitted to the Grand Jury, may also be selected for investigation. All information gathered in an investigation, including Citizen Complaints, is held in confidence within the Grand Jury.

Once government functions were identified for review, the Grand Jury choose to create committees to investigate specific identified issues. The committees then began the process of scheduling interviews with government entities, usually during normal business hours, attending evening meetings of various boards, and scheduling and attending presentations of department speakers before the full Grand Jury.

Tuolumne County Grand Jury Guide

The County Grand Jury of 2007-2008 prepared the Tuolumne County Grand Jury Guide (the "Guide"), which is presented by the Judge of the Superior Court to each member selected to the Grand Jury. The purpose of the Guide is to provide "an overview of jury procedures and operations specific to Tuolumne County." Since the majority of the jurors have not served before it is used as a reference for the duties and responsibilities of the Grand Jury.

Jurors' Training Seminar

California Penal Code 914(b) states that, "To assist a Grand Jury in performance of its statutory duties regarding civil matters, the court, in consultation with the district attorney, the county counsel, and at least one former grand juror, shall ensure that a Grand Jury that considers or

takes action on civil matters receives training that addresses, at a minimum, report writing, interviews, and the scope of the grand jury's responsibility and statutory authority." The California Grand Jurors' Association, in support of PC §914(b), provides a two day training seminar for newly appointed jurors. Tuolumne, Calaveras, and Amador counties have joined to hold this seminar and each county pays for each attendee. It provides the participants, in part, with an introduction of jury essentials, the laws governing juries, investigation techniques and report writing. Each of these topics combined give an opportunity for the juror to comprehend the scope of the Grand Jury service.

Closing Comments and Remarks

Serving on the 2012-2013 Tuolumne County Civil Grand Jury has been a rewarding experience. It has been educational and jurors leave with a fuller understanding of the important services and complexities of the programs that our local government provides to the citizens of Tuolumne County. The Grand Jury takes pride in our service and departs with an appreciation for the hard working employees of our County government and Special Districts.

In the beginning, a year seemed like a long time to serve on a jury, but in the end it seems too short. It went very fast and even with the best intentions of wrapping up early, there was a big push at the end to produce this report. The first several months were filled with training and developing the group's dynamics and procedures. Next, jurors delved into the process of selecting topics and conducting extensive investigations including interviews and document research. Soon, it was spring and time to write our findings and recommendations. Such is the cycle of the Grand Jury experience. The support provided by the presiding Judge and Tuolumne County staff was exceptional and the Grand Jury wishes to thank all Superior Court and county staff for their assistance and input during the process.

The Jury Assembly Room was provided for the Grand Jury use. This room was also used for other meetings and groups, and therefore was generally not available for daytime needs of the Jury. However, the County was very cooperative in allowing the Grand Jury to utilize many of the meeting rooms in other County buildings. It is the Grand Jury's understanding that next year's Jury will be relocated. As a new location is being considered, the Grand Jury offers the following needs and considerations:

- a meeting place with tables and chairs which can be used any day and at any time for confidential plenary and committee meetings and interviews
- a copy machine or access to one that can collate and double side
- a secure access to wireless internet (available immediately after term begins)
- a whiteboard, or similar item
- flip chart(s)
- a shared network drive accessible to all Jurors (available immediately after term begins)
- a secure place for Grand Jury mail, such as a lock box of some type

The Grand Jury must have a secure place for storage of supplies, mail, documents and confidential information. When the Grand Jury first convened, a single file cabinet with a lock was provided which was not adequate. After several months and numerous requests, a lock was finally installed on the storeroom door where the cabinet was, allowing for a secure place for Grand Jury mail and other documents. In addition, Grand Jury members should be able to request and receive reimbursement for personal office expenditures in the production of the final report. While there is a budget allocation for such expenditures, it is unavailable for personal juror office expense reimbursements.

Lastly, the 2012-2013 Grand Jury would like to thank the Superior Court for providing each of us with the Tuolumne County Grand Jury Procedure Manual which proved to be an essential tool throughout our tenure. The Grand Jury also wants to acknowledge the outstanding training we received from the California Grand Jury Association. We urge the continuation of these two sources for future Juries.

Report Response Monitoring

2011-2012 Grand Jury Report Recommendations and Responses

Response Requirements

According to the penal code (PC) §933(c) “no later than 90 days after the Grand Jury submits a final report on the operation of any public agency subject to its reviewing authority, the governing agency of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the Grand Jury has jurisdiction pursuant to Section 914.1 shall comment within 60 days to the presiding Superior Court”¹. The sections of PC §933 outlined below were used as the criteria in reviewing the responses to each finding and recommendation from each entity addressed in the 2011-2012 Civil Grand Jury Report.

Section 933.05(a) states that “...as to each Grand Jury finding, the responding person or entity shall indicate one of the following:

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

Section 933.05(b) states that “...as to each Grand Jury recommendation the person or entity shall report one of the following actions:

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

The above sections of PC §933 were used as the criteria in reviewing the responses to each finding and recommendation from each entity addressed in the 2011-2012 Civil Grand Jury Report.

¹ California Penal Code §933

Response Monitoring

The 2012/2013 Grand Jury chose to monitor the receipt and quality of the previous year's requested responses. If the Jury found responses had not been received, the response was incomplete, and/or it required follow-up, those responses and agencies were further explored, as deemed necessary by the Jury as a whole.

In order to assure that the 2011/2012 investigated agencies were held accountable to respond to the Grand Jury report, the Jury decided to present response information in a chart which states whether the response was received by the county, was on-time, whether it was found to be complete, and whether it required follow-up (see Appendix 1). Reports were judged complete if each finding and recommendation had received a response.

In total there were eight (8) reports, two (2) summaries, and twenty-seven (27) responses requested. Two requested responses were not received timely; these were from the Groveland Community Service District Board of Directors and the Tuolumne County Under Sheriff. The response from the Under Sheriff was deemed unnecessary by the presiding judge. The report for the Sierra Conservation Center and the Tuolumne County Jail did not require follow up. Six reports were followed up. These were the Office of Revenue Recovery, the Central Sierra Planning Council, the Road and Fleet Department, Tuolumne County Compensation and Benefits, Groveland Community Services District and the Environmental Health Department/TUD.

In an effort to ease the readers understanding of the following material a brief explanation of its layout may be helpful. Items starting with a bold "R" represent recommendations made by the 2011-2012 Grand Jury. These items are the first indented statement. Items in "*italics*" are the responses of the responsible agencies, and are preceded with "*Response*". All Grand Jury comments have no indent or italic type. All recommendations and responses are direct quotes from last year's report and the received replies. We appreciate, in advance, your time and effort to read this report.

Updates on the 2011-2012 Grand Jury recommendations and governing agency responses are as follows:

Compensation and Benefits

The Tuolumne County Board of Supervisors (BOS), County Administrative Officer (CAO) and the Human Resources Risk Manager provided the following responses to the 2011/12 Grand Jury recommendations.

R-1 "The County should negotiate with representatives of bargaining units to come up with a plan to reduce benefits by a significant percentage. ..."

Response: "This recommendation has been partially implemented with securing the 2nd Tier PERS program for all employees who join the County after March 12, 2011. ..."

R-3 “The County should investigate the feasibility of converting to a plan similar to a 401 K for local governments and reduce its contributions. ...”

Response: “This recommendation has been partially implemented in that research has been done and retirement reforms have and will continue to be one of many points of discussion in future labor negotiations.”

R-4 “The County should adopt a proactive plan to support Governor Brown's Twelve Point Pension Reform Plan, (see Appendix CCB-5) in order to maintain a level playing field with other public entities.”

Response: “This recommendation has been partially implemented in that recently bargained and legislated reforms are consistent with 5 of the Governor's proposed reforms.”

- 1) *“The 2nd Tier PERS program requires new employees to pay the employee share of PERS costs (a move towards cost sharing);”*
- 2) *“The 2nd Tier PERS program increases the retirement age for new employees;”*
- 3) *“The 2nd Tier PERS program bases pensions on a 3 year average of compensation rather than the highest single year;”*
- 4) *“Recent legislative changes have led Tuolumne County to make significant reductions in the number of retired annuitants it uses;”*
- 5) *“The County has totally eliminated its post retirement health insurance program as an option for new employees.”*

“The Board agrees that any fundamental shift from a defined benefit program (e.g. PERS) to a defined contribution program (e.g. 401k type program) or hybrid system (mix of defined benefit and contribution systems) as suggested by the Governor would best be initiated and implemented on a statewide basis. This would help ensure a level playing field when attempting to recruit and retain employees.”

R-5 “Paid leave days should be the same for all employees regardless of bargaining unit and should be reduced when in excess of 8-10 holidays, 6-8 sick leave days and 10 days vacation per year. ...”

Response: “This recommendation has been partially implemented in that significant changes in leave accrual rates and balances were recently made in the Executive/Confidential Unit Compensation Plan. ...”

As can be seen from the proceeding the County has already begun to review and implement a realignment of pay and benefits throughout the county. The major change has resulted from the establishment of a 2-tiered compensation plan. This system will improve the County's financial position as more new-hires replace existing personnel and retirees.

It would be prudent for future Grand Juries to continue monitoring the County's PERS contribution short fall, and the methods used to make up the amount owed to PERS.

Tuolumne Utilities District and Environmental Health Department

The Tuolumne County Environmental Health Department (EHD) and the Tuolumne Utilities District (TUD) provided the following responses to the 2011-2012 Grand Jury recommendations:

- R-1** “It is recommended that TUD (Tuolumne Utilities District) and EHD (Environmental Health Department) limit hook-up to the Phoenix Lake Basin interceptor pipeline to only cases of extreme hardship, where no viable alternative(s) exist.”

Response: “On August 8, 2012, subsequent to the 2011-2012 Grand Jury report, TUD and EHD met and made the following determinations:”

- i. “The “added connections from residences would not impact the line in any way that would cause a catastrophic failure”.*
- ii. “Upon installation of those connections “the interceptor would be reinforced” to “restore the integrity of the line”.*
- iii. “TUD and appropriate County agencies have in place ordinances and criteria that limit connections to the interceptor now and in the future.”*

- R-3** “The Grand Jury is convinced that public enlightenment is key to improving septic system maintenance within Tuolumne County. Therefore, the County should establish and continue a public education program via newspaper, radio, and Internet on proper septic system maintenance and other preventive measures”

Response: “Tuolumne County Environmental Health Department conducted two public Information sessions, in Sonora and Groveland, related to septic system design, care, and preventative maintenance. The response to these sessions will determine the frequency of future trainings.”

- R-4** “TUD should prepare a plan and implement the plan to eliminate the potential for disaster with the large inverted siphon to the Twain Harte interceptor.”

Response:

- a) The TUD staff and Board will be discussing possible solutions to the inverted siphon in the Twain Harte interceptor. It must be recognized that the solutions are not easily implemented and will necessitate months of study, engineering and significant funding will be required. The Board will have to approve such huge expenditures, being mindful of the expense to ratepayers.*
- b) It must be noted that TUD has contingencies available, in the event of a failure in the Phoenix Lake Basin that would maintain the integrity of the fresh water supply in Phoenix Lake.*
- c) Given the complexity of the Twain Harte interceptor issues, it appears that TUD, their Board, and the Environmental Health Department have implemented an ordinance, and have plans to limit possible contamination*

of Phoenix Lake. This issue will come before the TUD Board for discussion and planning.

Office of Revenue & Recovery

The Tuolumne County Office of Revenue and Recovery (ORR) agreed with all the findings of the 2011-2012 Grand Jury.

- R-1** “No analysis of a County department can ignore the present fiscal condition of the County. Each department has learned to do more with less. However, the effect of any effort to balance the County budget must be carefully measured. Budget cuts to most departments do what they are intended to do – save money. A budget cut to the ORR tends to decrease collections, which is clearly not in the best interest of the overall fiscal health of the County. For this reason, the Jury recommends, at a minimum, the Accounting Clerk be returned to full-time status.”

ORR Response: “The part-time position was re-instated to full-time.”

- R-2** “Regarding document storage, the Jury found that paper documents were stored both in the ORR office and the County Archives facility. Accessing documents from the Archives is difficult since it is located several miles away. Due to this distance, the ORR has not been sending documents to the Archives in recent years. The Jury recommends that when the fiscal health of the County improves, and time and staff are available, documents be scanned and saved in digital format.”

ORR Response: “Will be implemented as time and money allow.”

Groveland Community Services District (GCSD)

General Manager Gary J. Mello's response was on time and met the guidelines of the requirements stipulated by law. On September 11, 2012 the GCSD Board of Directors filed for a one month extension, until October 9, 2012. The 2012-2013 Grand Jury did not receive the response until April 2, 2013. In a response to a letter, dated March 21, 2013, from Judge Provost the GCSD stated they sent the response to the court in December 2012.

- R-1** “Reduce the compensation to both the General Manager and the Administrative Finance Manager to a level comparable to the Templeton Community Services District and more comparable with other Tuolumne County administrative positions.”

GCSD Response: “The objective of the Groveland Community Services Board of Directors is, therefore, to reduce the total remuneration cost of the 2 top administrative personnel from an open ended (uncapped) cost of nearly \$370,000 (currently, FY 2012-13) to a capped amount not to exceed \$320,000, hence a savings of nearly \$50,000 per year.” “Hence to reduce the GM/District Engineer from \$229,000 to \$200,000 total remuneration Hence to reduce the Admin. /Finance Mngr. from \$140,000 to \$120,000 total remuneration.”

R-2 “Eliminate the dual salary of the General Manager/District Engineer.”

GCSD Response: “The dual titles of multi-tasking employees shall be retained, in order to clarify the multiple responsibilities of some employees. However, the reporting of any one employees total remuneration (total pay and perks) shall be reported on a single line item for all public and private records. In this way, clear and concise transparency provides information to the public regarding the total responsibilities and total remuneration of any one employee at GCSD.”

Allowing for a lost response in December of 2012, it is still an issue with the current Grand Jury that the GCSD board of directors displayed a lack of respect for the law and for last year’s Grand Jury Report. Even though the GCSD was lacking a Board member until the general election in November of 2012, the sitting Board members could have asked for an extension, and most likely have been granted an extension, in July of 2012. California Penal Code Section 933(c) provides the basis for responding to Grand Jury reports. California Penal Code Section 933.05(b)(3) grants extensions for response times under certain circumstances, and with the approval of the presiding Judge, could be a basis for an extension in this case.

Central Sierra Planning Council

The Tuolumne County Board of Supervisors (BOS), the Office of the County Counsel (OCC), the City of Sonora and the Tuolumne County Auditor Controller provided the following responses to the 2011-2012 Grand Jury recommendations

R-1 “All public entity board members should be required to take a training class on financial record-keeping and financial controls of government entities. . . .”

OCC Response: “County Counsel has indicated that this is being implemented in Tuolumne County for officials that may become members of these agencies.”

R-3 “All public entities, including Joint Power Authority’s (JPA’s), are required to perform annual audits of financial records by law. Tuolumne County should adopt procedures to ensure that audits are performed at least annually of each public entity, including JPA’s, in the County or for which services are provided. A formal presentation to the Board of such entity or JPA should be made and a copy of the audit report should be filed with the county Clerk & Auditor-Controller for review and comment to the Board of Supervisors.”

OCC Response: “County Counsel has reviewed all agreements with the ten (10) JPA’s Tuolumne County is associated with and legal language is in place requiring annual audits. The Tuolumne County Auditor will be responsible to request the annual audits from these public entities.”

R-4 “All Joint Powers Agreements should be reviewed by County Counsel to ensure that appropriate clauses are included, including but not limited to , California Code Sections 6505 and 6508.1.”

OCC Response: “A review of the agreements with the ten (10) Joint Powers Authorities has been done by County Counsel. Eight of the agreements contained the aforementioned code sections, and two of the agreements are being amended to bring them into compliance. This work has been solely undertaken by Tuolumne County Counsel with the gratitude of the other entities in each of the JPA’s.”

Additionally, Tuolumne County Counsel is preparing a binder for each of the JPA’s that will include minutes, budget and other important information to be made available to the representative from Tuolumne County. Tuolumne County representatives to the entities change on a yearly basis; thus making continuity and knowledge of the entities’ decisions difficult to maintain. The binder will provide the representative with details of past decisions and policies made by the Boards of the JPA’s, bringing them up to speed quickly. In addition, the County Counsel’s Office invites each JPA for which the County is a member to provide a presentation to the Board of Supervisors during open meetings.

Tuolumne County Counsel has done a very credible job of getting these agreements up to date, limiting the County’s liability and seeing that annual audits are completed and examined by the County Auditor.

Roads Department and Fleet Services

The Tuolumne County Board of Supervisors (BOS) and the Tuolumne County Community Resources Agency (CRA) provided the following responses to the 2011/12 Grand Jury recommendations.

R-1 “The Roads Department and Fleet Services is experiencing a severe lack of funds. The county should consider a reprioritization of spending plans to allocate additional funding for road maintenance and repairs, and equipment and vehicle replacement due to age and wear.”

BOS Response: “Adequate funding for road maintenance is an ongoing process which will be very difficult to fully achieve or implement. ‘...’Adequate funding for road maintenance is recognized by the Board and staff alike as critically important.’... ‘moving as much of the County’s discretionary General Fund revenues to the Road Fund as possible.’ ...”

“The Board’s 5 Year Plan and 2012 Goals call for:

- 1) The development a Budget Prioritization System favoring public safety and road maintenance;*
- 2) CRA staff to complete an update of the County’s Pavement Management System to better plan and manage maintenance of the County’s road system on an ongoing basis;*
- 3) Maintenance of a Legislative Platform that includes the pursuit of road funding along the lines noted above.”*

CRA Response: "Funding for road maintenance in Tuolumne County is primarily provided through state and federal programs. ... As such, we concur that there is a need to identify new funding sources for road maintenance"

- R-2** "Vehicles from all county agencies should be considered for inclusion into Fleet Services Department's workload to achieve economies of scale."

BOS Response: "The recommendation has not yet been fully implemented, but is being worked on in conjunction with a prior initiative to create a centralized Fleet Services/Motor Pool. This is another component of the Board's 5 Year Plan. The FY 2012-13 capital budget includes funding to construct this space. As noted in the 5 Year Plan, the goal is to have all County departments using the new Fleet Services unit by the end of 2014."

CRA Response: "As noted in Finding F2, Fleet Services does have the capacity to maintain additional vehicles and has been encouraging all County Departments to utilize their services. Fleet Services has developed a flat rate schedule for many of its services and has advised all of the County Departments of these rates."

- R-8** "All first aid kits should be inspected monthly to ensure they properly stocked with necessary supplies and replenished as needed."

BOS Response: "The recommendation has not yet been implemented, but will by the end of December 2012. This is an OSHA requirement and will be overseen by the department's safety officer."

CRA Response: "This recommendation will be implemented by conducting first aid kit inspections in conjunction with the CRA Safety Officer's monthly fire extinguisher and fire alarm inspections. Also, if supplies are used from the kits, employees will be directed to let their supervisor know what they used so it can be recorded and replaced."

- R-11** "Both Road and Fleet Services should be inspected semi-annually to ensure that safety regulations are followed and all safety apparel is used as intended."

BOS Response: "The recommendation has not yet been implemented, but will by the end of December 2012. This will be overseen by the department's safety officer. Monthly spot checks are also recommended to include observing proper use of safety apparel, fire extinguishers, eye wash stations, first aid kits, etc...."

CRA Response: "This recommendation will be implemented through semi-annual inspections. Also, employees will be reminded to bring up any issues with PPE at the weekly safety meeting."

- R-12** "All Road and Fleet Services employees, including supervisors should be required to take annual CPR and first aid classes as a condition of continued employment."

BOS Response: "The recommendation has not yet been implemented, but will by the end of December 2012 with regard to basic first aid training. This training will be secured with the assistance of the Health Department. This recommendation will not be implemented with respect to CPR. Committing to initial and ongoing refresher CPR training would be a significant commitment of time and resources. Such training would be nice to do but is not required by OSHA and does not seem warranted."

CRA Response: "This recommendation relative to first aid training has not yet been implemented but will be by the end of December 2012. The CRA Safety Officer will coordinate with the County's Health Officer Dr. Todd Stolp and others to schedule first aid training for all Road and Fleet Services employees and supervisors at the frequency recommended by Dr. Stolp. This recommendation regarding CPR training will not be implemented. Such training would be nice to do but is not required by OSHA and does not seem warranted."

- R-13** "It is highly recommended that any equipment be removed from the front of electrical panels. A black/yellow stripe tape should be placed 36 inches around panel boxes to distinguish areas to be kept clear."

BOS Response: "This recommendation has been implemented. All equipment has been moved and areas to be kept clear have been appropriately marked."

CRA Response: "This recommendation has been implemented and all equipment has been moved. Areas to be kept clear have been appropriately marked."

- R-14** "Supervisors should designate an employee to inspect fire extinguishers monthly and initial tags."

BOS Response: "This was already occurring at the Fleet Services facility. As for all other fire extinguishers, the recommendation has not yet been implemented, but will by the end of December 2012. This is an OSHA and Fire Safety Code requirement and will be the responsibility of the department's safety officer. It should be noted that the County already has a contractor that completes OSHA required annual service of all fire extinguishers."

- R-15** "All fire extinguishers should be mounted in marked, readily accessible locations, according to safety standards."

BOS Response: "This is already occurring in the ANF Building and Fleet Services facility. As for Road shops, the recommendation has not yet been implemented, but will by the end of December 2012. This is an OSHA and Fire Safety Code requirement and will be the responsibility of the department's safety officer."

CRA Response: "All fire extinguishers in the A.N.F. building and at the Fleet Services facility are mounted and clearly marked. Any fire extinguisher that does not meet this standard at any of the other facilities will be corrected."

- R-18** “It is highly recommended that the Supervisor of the Big Oak Flat facility establish weekly safety meetings.”

CRA Response: “This recommendation has been implemented. All of the Road Crews and Fleet Services staff are required to conduct weekly or bi-weekly safety meetings.”

- R-20** “Eyewash stations should be installed, maintained, and inspected monthly in all facilities.”

BOS Response: “Eye wash stations already exist at all facilities. With respect to ongoing maintenance and inspections, the recommendation has not yet been fully implemented, but will by the end of December 2012. This will be the responsibility of the department's safety officer.”

CRA Response: “Eyewash stations already exist at all facilities. The Jamestown facility eyewash will be relocated inside the main shop to prevent from freezing in winter. The Fleet Services eyewash station is inspected weekly by the Fleet Supervisor and inspection records are maintained for two years. This recommendation will be implemented by inspecting, repairing and maintaining eyewash stations in all of the facilities.”

- F-24** “OSHA standards are not being followed regularly on a daily basis.”

BOS Response: “Disagree. This is an all-inclusive statement that suggests that no OSHA standards are being followed. This is not the case. It is agreed that some operations do need to be brought up to OSHA standards.”

CRA Response: “Disagree.”

One note on Finding 24 - It is disturbing that last year's Grand Jury allowed this finding verbiage to go unchallenged as presented. At the least, it is a broad and sweeping allegation with no supporting documentation provided. It is a call for the current and all future Grand Juries to carefully consider their final report contents.

- R-24** “The Jury recommends that the Risk Manager review OSHA standards and address compliance issues within the Road & Fleet Services Departments.”

BOS Response: “This recommendation has not yet been implemented, but will before the end of December 2012. It should be noted that the HR/Risk Manager did review the Grand Jury's findings relative to general safety issues with the County Safety Committee on July 19, 2012. The Roads & Fleet Services Divisions were not specifically targeted. Instead, the HR/Risk Manager took the opportunity to review the responsibilities of each committee member relative to inspecting and ensuring safe working environments within their respective departments. This will need ongoing follow-up.”

CRA Response: “The management staff of the Road & Fleet Services Divisions are knowledgeable of OSHA standards; however, we concur that a review of current standards and additional safety training for employees would be beneficial. The CRA staff will work with the Human Resources Manager to conduct the recommended review.”

A follow-up request was e-mailed to the Director of the Community Resource Agency at the end of 2012, requesting an update to the recommendations made by the 2011-2012 Grand Jury. These were listed as implemented but not completed in the responses filed by the Board of Supervisors and the Community Resource Agency. The CRA responded that the recommendations have all been implemented fully and are being monitored on an ongoing basis by the designated individuals within the department.

Future Response Recommendation

The Grand Jury would like to recommend that future response letters include the jury’s full verbiage of the recommendation as well as the agency or department response. Examples of this are the 2011-2012 responses from the Auditor-Controller, the Board of Supervisors, and the Sierra Conservation Center.

As a reminder, past Grand Jury reports, along with requested responses are available for public review on the Tuolumne County website at <http://www.tuolumnecounty.ca.gov/>.

Appendix A: 2011-2012 Response Monitoring Matrix

Appendix A

2011-2012 Grand Jury Response Monitoring Matrix

<u>Report:</u>	<u>Received Date:</u>	<u>Adequate:</u>	<u>Not Adequate:</u>
SCC & Baseline Conservation Camp	8/13/2012	Yes	
Tuolumne County Jail	9/4/2012	Yes - Accepted without Under-Sheriffs response	
Office of Revenue & Recovery	7/13/2012	Yes	
Central Sierra Planning Council	9/13/2012	Yes - With follow-up	
Road & Fleet Services Department	9/4/2012	Yes	
T C Compensation & Benefits	9/4/2012	Yes	
Groveland Community Services District	9/17/2012	Yes - Response received April 22, 2013	
Environmental Health & TUD	9/4/2012	Yes	
Jamestown Mine	No Response Necessary		
Tuolumne Transit	No Response Necessary		

Tuolumne County Air Pollution Control District

Summary

On November 28, 2012 the 2012-2013 Tuolumne County Grand Jury received a citizen's complaint. The complaint questioned the issuance of a permit by the Tuolumne County Planning Department (TCPD) for the construction of a Biomass Plant. The complaint stated that no public meeting was held to address construction of the wood burning plant. It further stated that no enforcement action was taken against a "gross polluter". Specific times and dates of massive emissions releases were reportedly provided by the complainant to the Tuolumne County Air Pollution Control District (TCAPCD) but no "Notice of Violation" was ever issued to the Plant. The complaint also stated that management at the TCAPCD had increased the emission levels allowed at this plant. The Grand Jury was asked to investigate both the TCPD and TCAPCD. The Grand Jury discussed these allegations and on November 28, 2012 formed a committee to investigate.

Glossary

CARB	California Air Resources Board
CO	Carbon Monoxide
EPA	Environmental Protection Agency
TPY	Tons per Year
TCAPCD	Tuolumne County Air Pollution Control District
TCAPCB	Tuolumne County Air Pollution Control Hearing Board
TCAPCO	Tuolumne County Air Pollution Control Officer
TCPD	Tuolumne County Planning Department

Background

The committee decided to interview management personnel at TCAPCD headquarters. An interview was scheduled and the Grand Jury found the staff eager to assist in any way possible. At the interview management staff was very open, amiable and informative. Answers to questions were direct and supporting documents were provided. The TCAPCD staffing and budget is very small; consisting of two (2) full time positions overseen by the Tuolumne County Agricultural Commissioner. The staff at TCAPCD maintains a positive attitude and does conduct investigations into air quality complaints. Investigations include air monitoring tests and interviews with plant operations staff and management personnel. The committee requested copies of pertinent permits, reports, complaints, investigations, violations and fines. All documents were provided within a few days.

Approach

The Committee members reviewed the documents provided by TCAPCD and concluded that the documentation was factual and consistent with information provided by staff during our interview. The Grand Jury determined that by providing factual information the complaint concerns would be addressed and the public well served.

Discussion

Permit to Construct: This permit is issued under strict conditions for construction and design to maintain emission limits below established Federal, State and local requirements. The Permit to Construct is administered by TCAPCD and enforced by the Tuolumne County Air Pollution Control Officer (TCAPCO) or Tuolumne County Air Pollution Control Hearing Board (TCAPCB).

- The Permit to Construct was issued to the wood burning plant on May 3, 2011 by the TCAPCD and allowed for 11.53 tons per year (TPY) of carbon monoxide (CO) emissions. Federal, State and local air quality requirements mandate that any project applicant that produces 100 TPY or greater CO levels shall be required to provide public notice.

Permit to Operate: This permit is issued to operate a combustion unit or boiler under set emission limits. These limits are set forth by Federal, State and local requirements. This permit also sets strict requirements for operation, training of staff, type and handling of fuel, proper handling and storage of waste. The Permit to Operate is administered by the TCAPCD and enforced by the TCAPCO or TCAPCB.

- The Permit to Operate was issued on February 15, 2012. Environmental Protection Agency (EPA) rules and laws were strictly enforced by the TCAPCD. The Biomass plant in question was tested according to EPA methods and met emission standards set by the California Air Resources Board (CARB) before the Permit to Operate was issued.

Facts

- EPA Rule 424 standard states that a public meeting is required only when the plant being constructed is large enough to produce an emission level that exceeds 100 Tons per Year (TPY). The plant in Question produces far less than this amount. The TCPD has no jurisdictional requirement in this matter.
- The TCAPCD requested that CARB officials evaluate the permit in question. The CARB raised the emission limit on one component which is still below CARB maximum emission levels. The TCAPCD did not raise emissions levels at the newly constructed Plant.
- The TCAPCD did investigate reports of excessive stack emissions and smells.

- The TCAPCD used methods set by EPA for air quality limits testing. TCAPCD interviewed plant operations staff and worked closely with them to come up with solutions to improve emissions from the plant.
- A Notice of Violation was issued to the Biomass plant on September 15, 2012. A fine was levied and changes to plant equipment were mandated at a substantial cost to plant owners. The plant completed improvements and was retested using established EPA methods and met set CARB and TCAPCD air quality emission standards.

Findings

- F-1** The Grand Jury finds that the TCAPCD is doing an outstanding job. Even with a small budget and few staff they manage to maintain a high standard of air quality in Tuolumne County. This is accomplished by thorough investigation of complaints, strict monitoring, education and when necessary enforcement.
- F-2** The accusations in the complaint were unsupported by facts and documents that were examined.
- F-3** The TCPD had no jurisdictional responsibility in the matter of requiring a public meeting regarding the construction of a new biomass plant.

Recommendations

- R-1** No recommendation.
- R-2** No recommendation.
- R-3** No recommendation.

Bibliography

Public Information Request (provided to complainant by TCAPCD)

Tuolumne County Air Pollution Control District; 2011/2012 Permit to Construct.

Tuolumne County Air Pollution Control District; 2012 Permit to Operate.

Tuolumne County Air Pollution Control District Investigation Report; Burning/odor Complaint.

Tuolumne County Air Pollution Control District; Investigation/Complaint Form; dated February 27, 2012; March 18, 2012 and July 16, 2012.

Tuolumne County Air Pollution Control District Investigation Report; Stationary Source Operations Permitting Complaint; dated June 27, 2011.

Tuolumne County Air Pollution Control District; Notice of Violation; dated September 15, 2012.

Social Welfare Department Fraud, Safety, Services Overview

Summary

The Grand Jury Committee investigating the Tuolumne County Social Welfare Department (TCSWD) was impressed to find the staff well organized, hardworking and dedicated. Overall, the staff is cohesive, has confidence in one another and conducts an array of comprehensive services. The Human Services Manager, who oversees this department, exhibits an essential positive attitude which extends to staff in accommodating the overwhelming increase in requests for assistance. The budget for the TCSWD is complex and complicated. Programs are scrutinized and held to the highest standards and funding guidelines of local, State and Federal agencies. The services provided are very compelling, emotional and require client responsibility and continuity. The processes for each of the programs are specific and must follow timed responses. The Grand Jury was very satisfied with the overall operations, exemplary attitude of all staff, and the professional and humanistic leadership of management and the Tuolumne County Human Services Director (TCHSD).

Glossary

AB109	Assembly Bill 109
AB 18	Assembly Bill 18
APS	Adult Protective Services (care facilities)
CMSP	County Medical Services Program
CPS	Child Protective Services
EBT	Electronic Benefits Transfer (food stamps)
IHSS	In Home Support Services (assist with domestic needs)
OJT	On the Job Training
PG	Public Guardian (self or financial care)
PPACA	Patient Protection and Affordable Care Act
TCHSD	Tuolumne County Human Services Director
TCSWD	Tuolumne County Social Welfare Department
WTW	Welfare to Work

Background

The Grand Jury decided early in the year to look into the overall operations of the TCSWD which had not been reviewed in about eleven (11) years. The department is very large and handles a vast array of services and programs. The jurors opted to break the inquiry into two separate investigations, Behavioral Health and Social Welfare. Behavioral Health is covered in a

separate report. This section will reflect the process of reviewing TCSWD programs and services, with the emphasis on fraud and safety. The issue of fraud revolves around the incidents of client fraud, how it is detected or reported and the actions by the TCSWD. The issue of safety revolves around the safety of clients, staff and the general public at the TCSWD.

Approach

The Grand Jury began their investigation by scheduling appointments and interviews with TCSWD staff and the TCHSD. The Grand Jury wanted to meet with staff to understand the budget, learn about programs and services, staffing and general operations. A letter was sent to the TCHSD ahead of the scheduled meeting with several pertinent questions, which allowed time to gather information and analyze local statistics. During discussions with the TCHSD and management staff, each department manager shared information about their particular divisional services, programs, staffing, strengths and weaknesses. Following the initial meeting, the jurors met, discussed and found there were two issues that were of concern that warranted further research. First, how is welfare fraud dealt with in Tuolumne County? Second, what are the safety measures implanted within the TCSWD building? Another letter was sent to the TCSWD which indicated there would be a follow up call to discuss each question.

Department staff interviewed:

Human Services - Director
Human Services - Assistant Director
Program Manager - Child Welfare Services
Program Manager - Eligibility
Program Manager - APS/PG/IHSS/WTW
Staff Services Analyst - Financial

Programs Reviewed:

CalWorks - Welfare to Work Program
Cal Fresh - Food Stamps/EBT
MediCal - Healthcare
Adoption Assistance
Foster Care
After 18 Foster Child Program (AB18) - Hope House transition
Adult Protective Services
Public Guardian
Public Administrator - Deceased Indigents
In Home Support Services

Job Connection
Cal-Learn - Pregnant Minors
Independent Living Program
Foster Care Licensing
Relative Assessment - Taking in children of family members
Community Outreach - Program and services education

Budget Overview:

The TCSWD utilizes 29% of Tuolumne County's 2011-2012 budget.

Administration and Personnel - \$9.6 million

Assistance - \$7.5 million

To local economy - \$16 million

Current Staff:

The TCSWD currently employs one hundred and seven (107) personnel staff. Each program manager gave the Grand Jury comprehensive information about the programs and services for which they are responsible. All questions asked by the jurors were answered to our satisfaction. All managers were open and shared concerns regarding current budget constraints and uncertainties. Management staff consistently remains focused on future planning and socioeconomic trends within Tuolumne County. Staff and management work well with one another and share the same concerns related to the increase in requests for assistance and potential cutbacks in budget and staffing. All staff recognized the complex nature of Social Services programs, specifically regarding regulations and guidelines under which they are required to operate. Each staff member acknowledges the need to be as compassionate and as "human" as possible in the course of delivering services to the public. It was also noted that the professional and empathetic attitude of the TCHSD extends to the management and line staff.

The question of how the staff deals with potential "fraud" case was well answered and documented. Once a complaint or report is received or noted, the information is turned over immediately to a specifically trained staff person to process. The responsible staff person reviews and follows up on the concern, and when warranted, contacts the client. The complaint is often determined to be a client oversight, and is recovered in a timely manner. Every effort is made to correct the situation with the client, without punitive measures. However, if that fails, another review with management determines if the case will be turned over to the proper law enforcement agency. Given the numbers of clients served, there was minimal fraud activity present. For example, in 2012 there were three fraud cases with a cost to the County of \$16,000.00. All cases are followed through from start to finish with appropriate disposition.

In a jurors' debriefing session, all mentioned the concern of the appearance of the lobby area of the TCSWD. It appeared dismal, messy, dimly lit, and the child's play area debatably adequate. During a follow-up conversation with the TCHSD, the committee was assured that a plan or request for painting, replacing the carpet, and general clean up was in process. The TCHSD expected the request to be approved and work started within a week or two. The jurors waited about a month and made an onsite visit to verify progress had been made. The painting was almost complete; new carpeting was installed; lighting was brighter, the child's play area was clean, tidy, and arranged in a safer manner.

In light of the safety concerns for staff, clients, and the public; questions were satisfactorily answered related to specific measures for safety and protection. It was noted by the jurors there was no posted escape or evacuation plan on site. The TCHSD verbally confirmed that juror's safety concerns would be addressed and followed-up. In addition, two unannounced on site visits were made by the Grand Jury in which cleanliness and all repairs showed continued progress toward completion.

Findings

- F-1** Reports or complaints of fraud are documented, investigated and handled appropriately within a timely manner.
- F-2** At the time of this writing, minimal fraud cases exist in Tuolumne County in relation to the overall number of clients served.
- F-3** The Director's and Management Staffs' professional and compassionate leadership extend to service staff, regarding customer service, problem solving and future planning.
- F-4** Use of frequent staff conversations, meetings, and trainings, has resulted in cohesive and strong internal working relationships in the TCSWD.
- F-5** Staff recognizes and is flexible with the ever changing regulations imposed by local, State and Federal funding sources. All changes to funding, whether increases or decreases, directly affect staffing and the ability to provide quality service. The TCSWD looks ahead to the immediate and long range impacts of State Assembly Bill 109 (AB109) and the Patient Protection and Affordable Care Act (PPACA) signed into law in 2010.
- F-6** Safety is a top priority for staff, clients and the public at the physical location of

the TCSWD which is located on Cedar Road North in Sonora. Specific precautions are taken to protect employees. Plexiglass separators and locked doors are in place between staff members and the lobby.

- F-7** On two unannounced on-site visits, no easily visible posted escape or evacuation plan was displayed in the lobby to protect clients or the public during an emergency situation.
- F-8** The lobby area was greatly improved over the four month period the Grand Jury reviewed the TCSWD.

Recommendations

- R-1** No recommendation.
- R-2** No recommendation.
- R-3** No recommendation.
- R-4** No recommendation.
- R-5** No recommendation.
- R-6** No recommendation.
- R-7** The Grand Jury recommends that the TCSWD immediately design and post an evacuation plan for the lobby of the TCSWD. A building safety plan should be visible and posted for clients, staff and the public in the event of an emergency evacuation pursuant to California Fire Code Sections 404.2 through 404.5.1. It is further recommended that the Grand Jury be provided documentation of such a plan. In addition, it is recommended that the 2013/14 Grand Jury review the status of the safety plan.
- R-8** The Grand Jury recommends that the TCSWD continue with the progress to complete the internal upgrade of the appearance of the TCSWD lobby. It is further recommended that the 2013/14 Grand Jury follows this project to completion.

Requests for Responses

- R-7 Safety:**
Tuolumne County Human Services Director

R-8 Interior upgrade:

Tuolumne County Human Services Director

Bibliography

County of Tuolumne Budget, Fiscal Year 2011/12.

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Behavioral Health Programs and Services Care, Custody, and Control in “5150” Incidents

Summary

The Grand Jury decision to review the issue of care, custody and control of persons deemed potential “5150” came early in the deliberations of the jurors. “Section 5150” refers to the California Welfare and Institutions Code (WIC), specifically the Lanterman-Petris-Short Act, which allows a qualified officer or clinician to detain a person in danger of him – or herself, or gravely disabled, due to mental illness. Overall, the Grand Jury was impressed with timely responses to meeting requests and document presentation. We found the staff to be open, forthright, cooperative, and most helpful in all discussions. At no time was any request ignored. All staff contacted were dedicated, concerned, and willing to assist in services provided. The Grand Jury was duly impressed with all agency representatives, their knowledge, experience, and willingness to work with one another in protecting individuals, families, and the community as a whole. While there have been unfortunate circumstances and incidents noted, a death in particular, the agencies involved have reviewed policies and implemented additional procedures in hopes of preventing tragic incidents now and in the future.

Glossary

5150	WIC designation for a person as a danger to self or others due to mental illness.
AMA	Against Medical Advice
BHD	Behavioral Health Department
CHP	California Highway Patrol
DSS	Tuolumne County Department of Social Services
ER	Emergency Room
MOU	Memorandum of Understanding
SPD	Sonora Police Department
SRMC	Sonora Regional Medical Center
TCSO	Tuolumne County Sheriff’s Office
WIC	Welfare and Institutions Code

Background

In light of a few incidents involving potential “5150” cases and individuals which brought attention to the community, in written or spoken media, the Grand Jury decided early to review the care, custody and control of potential “5150” persons. To understand the “5150” procedures, which are not common knowledge, jurors had to research and educate themselves on programs

and standards. Specific codes, regulations, policies, procedures and protocols were obtained and reviewed (State, County and other documents are listed in the Bibliography section of this report). It appeared there were gaps in the current overall procedure and protection of those involved. The Grand Jury felt the incidents, and the loss of one life, justified the need for a review and a report. The ultimate goal was to assure the community that necessary changes were reviewed, discussed, and implemented for the protection of the community as a whole.

Approach

Once the topic was approved by the Grand Jury, the jurors began to gather documents; conduct phone interviews and schedule personal on site appointments. Interview questions were developed for consistency while exploring the many viewpoints; documents; concerns; needed corrections (if any); and to identify system and procedural improvements. After each meeting with an agency, or representative staff, the jurors briefly met to discuss and review findings.

Discussion

The issue of care, custody and control of potential “5150” persons became very intricate. The documents reviewed were extensive, often repetitive, and overlapped other documents. Tuolumne County documents were consistent with state codes, regulations, and responsibilities. All large county policies and procedures and small county “5150” protocols, listed in the Bibliography section, were similar in approach, methods, and care for a potential “5150” person. In-person on site interviews reinforced how the local policies, procedures, and responsibilities were often a cooperative effort by several agencies. All conversations were open, forthright, supportive, and clear regarding a multi-agency response effort.

Representatives from the California Highway Patrol (CHP), Sonora Police Department (SPD) and the Tuolumne County Sheriff’s Office (TCSO) were each asked...*“What would make things better when dealing with the care, custody and control of a potential ‘5150’ person until a determination was made?”* Each agency separately answered...*“a secured room or area.”* Phone interviews to Behavioral Health Departments (BHD) and hospital Emergency Room (ER) staff in surrounding Mariposa, Alpine, Calaveras and Amador counties centered around one specific question...*“Does your hospital emergency room have a secured/secluded area for a potential ‘5150’ person?”* All contacted stated the same....*“No.”* The Grand Jury met with the Tuolumne County BHD, SPD, TCSO and Sonora Regional Medical Center (SMRC) staff and found all representatives to be dedicated and concerned. Each agency recognized unavoidable gaps; had confidence in other expert staff and agencies involved and felt holding monthly inter-agency team meetings had greatly improved the quality of care for individuals, families, and the community as a whole. It should be noted that all agencies provide some training for staff dealing with aspects and dangers of potential “5150” persons. All agencies are willing to share

their expertise, behavioral activities, and potential situations to make each other aware of possibilities in such unpredictable circumstances. The Tuolumne County BHD is currently reviewing and revising their 2007 Behavioral Health Protocols. Completion date for review and revisions is not yet determined.

Findings

- F-1** Tuolumne County BHD staff understands and follow required state codes and regulations.
- F-2** Tuolumne County BHD staff follow local agency specific protocols.
- F-3** Tuolumne County BHD staff is trained in all current policies, procedures, codes and protocols regarding a potential “5150” person.
- F-4** Monthly interagency team meetings have greatly improved working relationships while assisting in a “5150” incident.
- F-5** SMRC and surrounding county hospital ER’s do not have a secluded or locked room or area to secure a potential “5150” person.
- F-6** The 2007 Tuolumne County BHD protocols and other Memorandums of Understanding (MOU) revisions are in progress, with no specific completion date noted.

Recommendations

- R-1** No recommendation.
- R-2** No recommendation.
- R-3** It is suggested that all involved agencies and appropriate staff receive annual training relating to various aspects of “5150”.
- R-4** No recommendation.
- R-5** It is recognized that budget, staffing and licensing constraints are an issue, however it is recommended that all agencies involved work together in researching options for a “secured” room or area for the protection of staff and any potential “5150” person.
- R-6** It is recommended that all local MOU's and protocols relating to “5150”

occurrences be reviewed bi-annually and revised as appropriate. It is further recommended that the 2013-2014 Grand Jury follow the progress of the revisions to completion.

Request for Responses

R-3 Training:

Sonora Police Department, Chief of Police
Tuolumne County Sheriff's Office, Sheriff
Sonora Regional Medical Center, Vice President of Nursing
Tuolumne County Behavioral Health, Department Manager
California Highway Patrol (Jamestown), Lieutenant Commander

R-5 Secured Area:

Tuolumne County Behavioral Health, Department Manager
Sonora Regional Medical Center, Vice President of Nursing

R-6 MOU revisions and Protocols:

Tuolumne County Behavioral Health, Department Manager

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California Small County 5150 Protocols.

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California Health and Human Services/Dept of Mental Health. *Application for 72 Hour Detention-For Evaluation & Treatment WIC 5157*. 2012.

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San Bernardino County. *Mental Health Services Act*. Department of Behavioral Health, Community Services Support. 2007. <http://www.sbcounty.gov/dbh/mhsa>

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Tuolumne County Behavioral Health Department Policies and Procedures. *5150 Admission Process*. 2007.

Tuolumne County 5150 Evaluation and Response Protocol. Multi-Agency Agreement. 2013.

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Columbia Fire Protection District

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.

Summary

Special Districts are created by the residents or property owners in a defined area to deliver specific services. Special Districts can be utilized to provide fire and related services. Tuolumne County has numerous independent Fire Districts throughout the County serving the unincorporated areas. These independent bodies are governed by appointed or elected Board of Directors operating under prescribed State laws and regulations. The services provided include fire suppression, medical aid, and fire prevention. Some of the Districts in Tuolumne County were formed as late as the 1950's while others can be traced back to the 1800's. The Columbia Fire Protection District (CFPD) is one of the oldest functioning Fire Districts in the County.

Fire Districts are non-enterprise Districts, meaning that the operating funds are derived from a portion of County property taxes or may also be supported by special property assessments. These funding sources may be augmented by donations and fund raising activities, but those sources are usually small and can vary from year to year. The fiduciary responsibility lies entirely with the Board of Directors of the District. The public trust is entirely within the jurisdiction of the Board which bears the full responsibility to make decisions in creating policies and oversight to properly manage the District's resources.

The Grand Jury investigation of the CFPD focused on its policies, practices and the alleged embezzlement of District funds. As a result of our investigation, it became clear that at the time of the embezzlement crime there was a significant lack of business practices and operational controls. The lack of accountability and controls allowed fraud and misuse of public funds and resources to occur over a long period of time before being discovered.

The Grand Jury makes several recommendations concerning operating policies, financial accountability and personnel management that CFPD should undertake immediately.

Glossary

CFPD	Columbia Fire Protection District
CVFDEC Co.1	Columbia Volunteer Fire Engine Company No. 1
ISO	Insurance Service Office
LAFCO	Local Agency Formation Commission
MSR	Municipal Service Review
MAA	Mutual Aid Agreement: an agreement for assistance outside an agency's boundary and the ability to call upon agreement members for assistance within the agency boundary.
SOP	Standard Operating Procedures

Background

CFPD is a Special District formed in 1916 which operates under Section 13862 of the Health and Safety Code and Government Code 61100 (d) and (n). The current CFPD boundary encompasses approximately 586.7 acres with 843 private parcels. Columbia State Park is also included within the CFPD boundary. Dating back to the mid 1800's, fire suppression was the duty of Columbia Volunteer Fire Engine Company No. 1 (CVFDECo.1). CVFDECo.1 is now a nonprofit organization that promotes and maintains the historical component of Columbia Firefighting.

The District responds to medical as well as fire suppression calls. The District also may provide fire prevention, rescue and auxiliary functions for public health and safety. The majority (75%) of the calls for service are outside of the District's boundary according to District officials. The Tuolumne County Administrative Officer's 2000 report titled "An Analysis of Fire Protection in Tuolumne County" puts the number of outside boundary calls for CFPD at approximately 67%. In either case, the greater number of calls is outside of the current District.

Columbia Fire Protection District (CFPD) facilities serve other community functions. The fire house bays are used for social events such as parties, fund raising events and community meetings.

In 2011, the CFPD Board of Directors conducted an internal investigation of a former Fire Chief after receiving complaints that he responded to a call-for-service with alcohol on his breath. The Board placed him on administrative leave in June 2011. An interim chief was brought in to investigate the claims and began researching records, which uncovered suspected financial misconduct. The Board fired the former Chief a month later after turning over the findings of its internal investigation to the Tuolumne County Counsel's office. The District Attorney's Office received the case on April 9th, 2012.

The former fire chief was arrested and charged with one felony count each of misappropriation and embezzlement of public funds in August of 2012. The charges included purchases, checks, misallocations, false claims and unauthorized loans between January 2007 and June 2011. He plead guilty and sentencing is pending as of this writing.

The Grand Jury would like to acknowledge the high quality of emergency response services provided to the public by the CFPD during and after the investigation. These services were not compromised despite recent administrative challenges. The CFPD Insurance Service Office (ISO) rating is a 5, which is considered very good in a rural area.

According to the Tuolumne County Grand Jury matrix, the CFPD has never been formally investigated by a Grand Jury. The 2010-2011 Grand Jury did complete a review of Countywide

Special Districts, in which the CFPD responded to the findings and recommendations for their specific District (Appendix A).

Approach

Authority for the Grand Jury to investigate Special Districts is found in Penal Code Section 933.5. The Grand Jury reviewed public documents, public reports, confidential reports and conducted interviews with members of the CFPD staff and Board. Additional interviews were conducted with the offices of the County Counsel and County Auditor. Two Board meetings of the CFPD were attended by Grand Jury members and a limited review of meeting minutes was conducted.

The focus of the Grand Jury's investigation was related to review of policies and procedures which may have contributed to the alleged embezzlement of CFPD funds and property. Enumeration of the incidents or the scope of potential monetary losses was deemed the jurisdiction of the criminal justice system.

Discussion

Revenues and Funding:

The Grand Jury requested documentation on the CFPD's funding resources. Revenue sources reported include property parcel assessments of \$25,320, \$42,872 in taxes and \$31,992 reimbursement for wild land fires. On the average, \$10,000 is generated through fund raisers according to CFPD officials. The County of Tuolumne Auditor disperses funds from the CFPD account by means of a warrant system as authorized by the CFPD Board. The property assessments are \$80.00 per parcel within the District. Tax and parcel fees are held in a separate fund administered by the County of Tuolumne Auditors Office.

The CFPD receives donations from the public which vary from one year to the next. The District was gifted \$27,616.62 by The Lyle R. Scott Revocable Trust. The funds were officially accepted by the CFPD (former) Fire Chief on October 16, 2007 and deposited into a bank account established for the Firefighter Fund. Only one signature was required for fund withdrawal. Funds from the Trust were part of an investigation and criminal filing by the Tuolumne County Office of the District Attorney.

The CFPD does not receive reimbursement for calls outside of the District with the exception of wild land fires. The properties owned by the State of California (Columbia State Park) do not directly pay property taxes or parcel assessments. However, the concession operators within the Park do pay the same assessments as other non State owned properties within the District, as well as a possessory tax.

A separate Fire Fighter Fund is used to provide some comfort amenities to the firefighter barracks such as furniture or a TV. These funds are acquired by various fund raisers and not the revenue generated by tax or parcel fees. In the past the CFPD fire chief administered these funds. This responsibility now rests with the Administrative Captain.

The CFPD's ability to generate additional funds is limited. Enlarging the District is a possible mechanism to add to both the District's tax base as well as including additional properties in a future parcel assessment. According to the Local Agency Formation Commissions' (LAFCO) 2007 Municipal Service Review, CFPD was in the process of proceeding with expanding the District's boundary. Expansion has not occurred as of the date of this report.

Administration:

The CFPD is governed by a three (3) person elected Board. The Board holds regular public meetings once per month at the Columbia Fire House. The District also employs a Fire Chief (currently vacant), Administrative Captain (created following the removal of the former Chief) and Captain. The Administrative Captain is responsible for the District's mail routing. Mail to the Board is reviewed at the monthly Board meeting. Along with other agenda business, the Board reviews reported expenditures during these meetings. Legal services are provided by the County of Tuolumne office of County Counsel. Collection of Assessments and taxes are provided by the Tuolumne County Assessor's Office, with disbursements of funds in the Columbia Fire District's account provided by the Tuolumne County Auditor's Office.

District Staff:

Since the majority of firefighters are volunteers, the staffing level can vary widely. The Grand Jury received conflicting information on actual personnel numbers. At the time of the Grand Jury review, sufficient personnel were reported to be available to staff the station on a twenty four (24) hour basis. The Board President reported two (2) full time positions, six (6) paid part time positions, and six (6) volunteers for a total of fourteen (14) personnel. At a joint Fire Chiefs Meeting held on November 1, 2012; the CFPD provided the Grand Jury with a document listing a total of twenty-two (22) personnel. Volunteers are recruited through the Columbia College Fire Fighting Academy.

Monthly compensation was reported to be \$500 each for the Fire Chief and Captain, \$1600 for the Administrative Captain and a \$200 stipend for the Academy volunteer firefighters. The Board members are also allowed to be compensated per meeting, but have chosen not to be paid. However, a new member has recently been elected and it is not known if he would choose to collect compensation. Stipends for response to fire and emergency calls have also been paid in the past.

Operating Agreements:

The District rents the current Fire House located on Jackson Street from the CVFDECo.1 for \$200 per month. The firefighter barracks adjacent to the fire house is rented from the State of California for \$1.

CFPD is a party to the Master Mutual Aid Agreement (MAA) for Fire Service Agencies within Tuolumne County. This requires, with certain exceptions, agencies to respond to dispatches outside of their boundary or service area. Conversely, a Fire Chief or Incident Commander may request aid under this agreement if needed in their area.

District Equipment:

List of equipment assets:

- E-742: 1990 Ford C8000 - 1250 GPM, 500 Gallon Tank, ISO Type 2
- E-743: 1998 International - 500 GPM, 500 Gallon Tank, Type 3 (currently not in service)
- E-746: 2012 Ford F-550 - 160 GPM, 250 Gallon Tank, Type 6 (currently assigned as E-743)
- Squad-745: 1984 Ford 1 Ton - Primary use is for light rescue, carries the Jaws and other rescue special tools. Does not carry water.
- C-740: 2003 Ford Expedition - No equipment carried, used as support vehicle.
- U-746: 1999 Ford F-350 - No equipment carried, used as support vehicle. Jointly owned with the CVFDECo.1. Although this truck is co-owned with the CVFDECo.1; paint and emblems only reflect the standard CFPD colors and design.

A Property Inventory and Equipment Control System have recently been initiated.

Procurement Policy:

Acquiring materials and services is authorized by the Board at Board meetings. The Fire Chief or other designee has the ability to purchase some day to day items, while the Board approves larger purchases using a two signature warrant which is transmitted to the County Auditor's Office for processing. A formal written policy has not been produced.

Recruitment:

As noted above, Academy Volunteers are used at the CFPD along with other personnel. CFPD does not have a written policy regarding background investigations prior to hire or updating Department of Motor Vehicle driver history checks. A formal written policy on recruitment and retention of employees has not been produced.

Findings

In general, there is a lack of cohesive policy and procedural manuals throughout all activities. Administrative business practices are conspicuously missing in many critical areas.

- F-1** CFPD's lack of written enforced procurement policies contributed to the loss of valuable and limited resources.
- F-2** CFPD did not have a property inventory control to adequately track acquired materials, tools and other minor equipment.
- F-3** The lack of Administrative Controls including financial oversight allowed misuse of public funds.
- F-4** Routing of CFPD business mail does not have established procedures for logging of mail received. A Grand Jury request for information was held without response for over a month. The explanation provided was that the Board reviews the mail at the monthly meeting. Clear Board directives for administration of necessary time sensitive actions are nonexistent.
- F-5** Hiring of Administrative positions such as a Fire Chief, Administrative Captain or Captain are not subject to pre-employment background checks.
- F-6** The CFPD is not part of the California Department of Motor Vehicle Pull Notice Program to insure operators of District vehicles maintain satisfactory driving records at the required certification level.
- F-7** Investments (deposits) and balances in banking institutions are not routinely disclosed.
- F-8** Use of the County Counsel's Office should be limited to routine matters, such as the Brown Act, general employment issues and conflict of interest topics. The months of delay at the County Counsel's Office jeopardized recovery and accurate accounting of losses of embezzled funds.
- F-9** CFPD retains some funds including donations, gifts and reimbursement in accounts separate from the County Auditor's administration. Some of the accounts only required one (1) signature for fund withdrawal prior to the embezzlement. During our investigation, the Grand Jury learned that the Board now requires two (2) signatures. There is no formal policy with delegations and limits.
- F-10** There is difficulty in obtaining consistent, verifiable and factual information on the number of current personnel and salaries. Additionally, multiple requests for documentation were required to obtain basic documentation which should be made readily available to the public.
- F-11** The CFPD Board has three (3) members.

- F-12** The Board meeting agendas are posted at the Post Office and Fire Station on Friday afternoon for the regularly scheduled meeting on the first Monday of the month.
- F-13** The Board has no membership in larger State wide organizations that support Special Districts.
- F-14** The Standard Operating Procedures (SOP's) provided to the jury is not dated or signed. It is unclear as to whether it has formal approval from the Board. Review of this document found many missing pages, unfinished sentences, inconsistencies and omissions (e.g. cell phone use in bomb threat zones and a potential liability related to red light and siren usage also known as code three driving). These deficiencies may indicate this is a draft document.

Recommendations

- R-1** Establish a formal procurement policy that includes dollar amount limits on purchases and designates employees within those limits. Establish a policy for emergency purchases. California Health and Safety Code Section 13905 allows for the use of a petty cash fund for minor purchases, should the District choose to utilize this provision.
- R-2** Expand and maintain an Inventory Control System which, at a minimum, includes the item description, fund source for the purchase, cost and assignment to individuals, buildings or rolling stock.
- R-3** At each Board meeting a financial balance sheet should be presented. At a minimum the financial balance sheet should include the current cash assets held by the County Auditor's Office, any funds held in financial institutions and petty cash if any. All expenditures and disbursements should also be enumerated. The level of detail of the report must be sufficient to disclose to the Board and the public the financial activities of the District. Retain transaction details as required in California Health and Safety Code Section 13868. Require the District's Financial Officer to be bonded for loss.
- R-4** A procedural policy should be developed whereby incoming mail is directed in an efficient manner. Incoming business mail should be stamped with the date received, and routed to the required position. A designated Board member should be informed of mail requiring a more immediate response.
- R-5** Develop an Outreach and Recruitment Policy which includes the objective of recruiting and retaining qualified administrative individuals (e.g. professional reference checks and background research at the level appropriate to the position being considered).
- R-6** Enroll the District in the California Department of Motor Vehicle Pull Notice Program (EPN). Establish minimum qualifications for operation of District vehicles. Establish a list of operators of the jointly owned utility vehicle. Establish procedures to ensure those drivers hold valid operator licenses with an acceptable driving record.

- R-7** Management of investments (bank accounts) in financial institutions must be publicly disclosed. Government Accounting Standards Board (GASB), Statement No 3 is a reference for investment disclosures. Provide this information at a minimum of quarterly or at the next Board of Director's meeting if the manner or location of the investment or account is changed.
- R-8** In the case of a possible criminal matter, such as the alleged embezzlement of funds, the District should contact the Sheriff's Office or the District Attorney's office immediately.
- R-9** The District should consider moving all cash accounts to the County Auditor's Office to ensure that a system of checks and balances is in place.
- R-10** Develop a master filing system which can be used to locate public documents when requested. Public documents must be provided when requested as required in the California Public Records Act, Government Code Section 6253.
- R-11** The Board should consider enlarging the number of members to add flexibility and diversity.
- R-12** Consider additional means to communicate and give notice to the public on Board meeting agendas and activities. Although the Board is meeting the minimum requirements of the Brown Act, additional outreach and communication with the public could be enhanced through the use of additional methods such as a website, public service announcements and press releases.
- R-13** Consider membership in an organization such as California Special Districts Association which has many small district members.
- R-14** The Standard Operating Procedures (SOP's) should be finalized and approved by the Board.

Request for Responses

Pursuant to Penal code section 933.05, the grand jury requests responses from the following governing bodies:

- Columbia Fire Protection District Board of Trustees.

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda and open meeting requirements of the Brown Act.

Bibliography

Municipal Service Review for the Strawberry Fire District, Columbia Fire District, Jamestown Fire Protection District and Mi-Wuk/Sugar Pine Fire Protection District, Tuolumne County Local Agency Formation Commission (Tuolumne Co. LAFCO), December 17, 2007

Tuolumne County Fire & First Responder Study – 2011

**Appendix A: Columbia Fire Protection District Response to Fiscal Year 2010-2011
Tuolumne County Grand Jury Report.**



COLUMBIA FIRE PROTECTION DISTRICT

11328 JACKSON ST. COLUMBIA CA. 95310

Station 74

Fire / Rescue

Phone (209) 532-3772 or Fax (209) 532-078

September 19th 2011

Superior Court of California
County of Tuolumne
60 North Washington St
Sonora, CA 95370

RE: 2010-2011 Grand Jury report

We agree to your findings F1 thru F10

The following are our findings to your recommendations that you requested:

R1. Our district has either a Board Member or Firefighter that goes to all local meetings to report what the district is doing.

R2. All newly elected board members are given orientation when they start their term.

R3. Our board takes all classes on the Brown Act, Ethics and Conflict of interest that are given by the county. We also get information from the internet.

R4. We are in the process of updating our Policy and Procedures Manuals, and other manuals that we use.

R5. We have boundary maps available upon request.

R6. The agenda for all meetings is posted in front of the fire house and post office.

R7. We discuss the budget at every meeting.

R8. A website has been discussed but nothing has been decided, information is being obtained.

R9. We have not explored the option of creating a Community Service District.

We hope that you find this information helpful.

Sincerely,

Stan Steiner, President
Columbia Fire Protection District

Tuolumne County Building Code Compliance

Disclaimer

This report was issued by the Grand Jury with the exception of one member of the jury that identified a conflict of interest. This juror was excluded from all parts of the investigation, including interviews, deliberations, and the writing and acceptance of the report.

Summary

The Grand Jury wishes to thank the Office of the County Counsel and its entire staff, and the Community Resource Agency and its entire staff for their invaluable help and cooperation during this investigation. Both departments are hard working and dedicated to providing timely and accurate information, not only to the Grand Jury, but to the citizenry of Tuolumne County. Tuolumne County Code Compliance violation handling has undergone significant changes in the last few years. The process has been streamlined and fines have been eliminated or lowered. This has been accomplished by a general restructuring of county agencies to accommodate financial constraints due to the economic conditions prevailing at this time. A concise example of this is the restructuring of the Community Resource Agency, bringing 12 individual departments together under one controlling entity.

The Grand Jury's investigation originated with a citizen complaint and a subsequent attempt at fact finding. The County's Document Retention Policy of three years, for closed complaints, rendered this fact finding attempt a dead end. An allegation of potential impropriety in the manner the original complaint was handled prompted the Grand Jury to examine the method the County now uses for Code Compliance Violations.

The Grand Jury found that document retention policies varied, depending on whether the Compliance case was open or closed. The Grand Jury believes that document retention should be five years minimum for all Code Compliance violation documents, whether the case is open or closed.

A finding of the Grand Jury which is of benefit to all parties, county workers and the public, is that the adoption of a new Code Compliance process in 2011 resulted in a much simpler matrix for the establishment of fines and fees for Code Compliance violations.

The Grand Jury found that time tracking during the Opportunity to Correct phase of the Code Compliance Violation process appears to be time that may be better spent in inspections of additional properties, either for the permit process or additional Code Compliance Violations. The Grand Jury found that no penalties are levied for Code Compliance violations at the Opportunity to Correct stage of the process.

The Grand Jury's investigation of the Code Compliance process included investigating the protections for county staff if conflicts arise when Department heads or elected officials are the individuals complained about in a Code Violation. The Grand Jury found no clear guide lines for employees following procedures and then being singled out and castigated by superiors for doing their jobs.

Glossary

ASW	Administrative Search Warrants
BOS	Tuolumne County Board of Supervisors
CCD	Tuolumne County Code Compliance Division
CCO	Tuolumne County Code Compliance Officer
County	Tuolumne County
CRA	Tuolumne County Community Resource Agency
DC	Division Chief of the Building and Safety Division of CRA
EO	Enforcement Officer of CRA
FAO	Final Abatement Order
IWP	Inspection Warrant Procedure
NAO	Notice and Order
OTC	Opportunity to Correct
OCC	Tuolumne County Office of County Counsel

Background

This investigation was prompted by a citizen complaint letter. A health and safety issue had arisen with an adjoining property owner and a complaint was filed with the former Code Compliance Division. The complaint alleged that the Code Compliance Division failed to follow the complaint process in order to shield a member of County staff or management from being subject to a Code Compliance Complaint. In this case, the complaint was against a neighboring property owner who was a County employee.

Initially an effort was made to verify the citizens' allegations. Unfortunately the statute of limitations for document retention for the initial health and safety complaint had passed and no records of the initial Code Compliance complaint were available for review. Documents for closed Code Compliance Complaints are held for three years, open complaint files are held for five years.

In 2008 the Tuolumne County Code Compliance Division (CCD) was disbanded by the Tuolumne County Board of Supervisors (BOS). Code Compliance was restructured into the Tuolumne County Community Resource Agency (CRA). The CRA is comprised of twelve divisions with eight Deputy Directors or Supervisors working under one Director (Appendix A).

Approach:

The Grand Jury's initial approach was to gather and compile information from the Tuolumne County Office of County Counsel (OCC). The Grand Jury had hoped to verify as many of the allegations as possible in the complaint letter. Although information was available for a later issue between the County and the complainant, that later issue had no bearing on the Grand Jury's focus. The GJ decided that since the complaint was untimely for a follow-up investigation, a review and investigation of the County Code Compliance complaint process was warranted.

The Grand Jury next began to investigate the process of initiating a Code Compliance complaint by a citizen of Tuolumne County, and the process used to handle complaints by the Tuolumne County Community Resource Agency (CRA). The Grand Jury's investigation proceeded with interviews of management and staff of CRA. Appropriate follow-up was conducted when necessary for clarification of issues or facts.

Interviews were conducted with individuals from both the Office of the County Counsel and the Community Resource Agency. Documents were requested and provided by both Agencies. The Community Resource Agency provided the Code Compliance Procedures Manual, the Community Resource Agency 2012 Annual Report and a Power Point presentation on the new Code Compliance Process. The Office of the County Counsel researched the original Code Compliance Violation alluded to in the complaint letter, and provided links for online resources to County Personnel Rules and Regulations.

The Grand Jury requested, received and reviewed relevant county documents during the investigation. These included a copy of the CRA Code Compliance Procedure Manual. This manual outlines the process of initiating a Code Compliance complaint. The Grand Jury additionally reviewed the 2012 Community Resource Agency Annual Report.

Discussion:

The Community Resources Agency (CRA) is responsible for receiving all alleged complaints of a violation of any Ordinance that CRA has authority to enforce. The Ordinances enforced by the CRA and typical types of complaints received are related to such actions as building without a permit, living in an RV for more than 30 days, improper signs, illegal home occupations, failed septic systems, illegal grading and unsafe construction.

The County's Code Compliance regulations, procedures and penalties are contained in Chapter 1.10 of the Tuolumne County Ordinance Code. CRA will take any complaint even from those who wish to remain anonymous. The minimum information necessary to start an investigation includes a full street address of the property in question and the nature of the complaint. In the CRA Annual Report it was reported that 431 code compliance complaints were processed in 2012.

The investigated Code Compliance issue initially raised by the complainant occurred in 2007. In 2008 the Tuolumne County Code Compliance Division (CCD) was disbanded by the Tuolumne County Board of Supervisors (BOS). On April 18, 2011 Tuolumne County Ordinance 3195 which amends Chapter 1.10 of the Tuolumne County Ordinance Code was adopted by the BOS (See Appendix B). As a result a new Code Compliance procedures manual was developed and a new process was instituted by CRA.

Code Compliance Violation Procedures:

The following is a condensed version of the current procedures for initiating a Code Compliance Complaint.

- Upon receipt of a code violation complaint letter by the staff of CDA a case file is opened.
 - Complainants are not required to provide any personal information.
 - If the complainant wishes to be contacted, their information is logged into the system as a “contact”.
 - The complaint is not between private parties, but a potential issue of non-compliance between the County and the alleged violator.
 - An address must be provided by the complainant. If an address is not provided, clear directions from an adjacent property must be provided.
 - If directions are given, the complainant should be notified that if the inspector cannot find the violation based on the directions the case may (or will?) be closed.
 - Property owner or tenant must be stipulated on the complaint. This may be provided by the complainant or be derived from county legal records.
 - Apartment numbers must be included.
 - Specifics of the complaints nature and location on the parcel must be included.
 -
- The parcel, for which the complaint is stipulated, must be located in the LandTRAK database. LandTRAK is the County’s database of land parcels used to identify, via Assessor’s Parcel Number, property in Tuolumne County..
 - Assessor’s Parcel Number, zoning, owner’s mailing address and County District are added to the complaint file.
 - A check for prior violations already logged for the parcel, restrictions are added if necessary.
 -
- A comprehensive records search for the stipulated parcel is conducted.
 - Is this a legal parcel?
 - Is the use consistent with the current zoning?
 - Is a permit on file which approves the use/structure/activity?
 - Is there a code compliance file on this parcel?
 - Is it active or closed?
 - Is it for the same violation?
 - Did the case expire due to inactivity?
 - Has the violation been in existence for 5 or more years?

- The resources include, but are not limited to:
 - Building permit files
 - Planning project files
 - Environmental Health files
 - Assessor's records
 - House numbering
 - County Surveyor
 - CRW Systems databases in use by the County. CRW is an independent contractor, providing database management software for State, county and local governments.

The above bulleted procedures are subject to time tracking by the individuals performing all or part of the procedure. Time tracking is in 15 minute increments. Time tracking for Code Compliance cases is used to apportion time to the case files during the entire time a case is open. CRA informed the GJ that historical records and time tracking have given an accurate indicator of the time spent, from complaint initiation to case closure, for Code Compliance cases.

Once a Code Compliance case is entered into the County System an inspector is dispatched to the location to verify the issues. Inspectors are constrained by Right of Entry guidelines (Tuolumne County Ordinance Code Section 1.10.060) and if denied access will have to resort to an Inspection Warrant Procedure (IWP). IWP's are Administrative Search Warrants (ASW), issued by a judge of the Superior Court of the County of Tuolumne. An ASW requires the review of the Division Chief for the Building and Safety Division and the approval of the CRA Director.

Upon inspection completion, a Notice of Violation is served (if warranted) and, unless the violation is deemed an immediate health and safety issue, an Opportunity to Correct (OTC) is issued. An OTC does not involve any fines. Applicable permits must be obtained and the proper paperwork presented where necessary by the violator to correct any identified violations. An appropriate time deadline is set. Property owners have a number of options available to them to respond to an OTC and are as follows:

- Correct the violation within the deadline period.
- Request an extension of the deadline – in writing prior to the deadline – Enforcement Officers may grant extensions, these must be in writing and mailed to the property owner. If extensions are denied the property owner must be informed in writing of the rationale for the denial. The county's Code Compliance Officer (CCO) must concur with the reasons for the denial.
- Request a withdrawal of the OTC. Such a request can be made if the property owner can demonstrate that the violation has existed for more than 5 years prior to the date of discovery and is not a Health and Safety issue.

When an OTC is issued, no staff time is charged to the individual named in the Complaint. It is only if the individual does not take advantage of the OTC opportunity that fees accrue and time is charged. The Grand Jury views the OTC notice as being similar to a traffic violation and feels

that a reasonable late fee, as a reminder that it is less costly to follow the law than break the law, would benefit the county and help to defray costs somewhat.

Should a property owner fail to remedy an OTC, within the set time frame, the County, through the Community Resource Agency – Department of Building and Safety, will then issue a Notice and Order (NAO). A NAO will include a penalty for not correcting the violation, a charge for abatement cost recovery, a new deadline to correct the violations, and a notice of additional charges if the violations are not corrected by the deadline in the NAO.

The property owner must then do the following:

- Correct the violation(s) within the deadline set in the NAO.
- Pay the penalty within 25 days of being served the NAO.
- Pay the abatement costs within 10 days of being served the demand by the Code Compliance Officer.

Property owners who receive a NAO may file an appeal within 15 days of the date of receiving the NAO. Property owners may respond in writing with a detailed explanation of the grounds for the appeal. If an appeal is not filed within the 15 day appeal period the violation is deemed admitted and the NAO becomes a Final Abatement Order (FAO). Enforcement Officers (EO) must prepare the FAO for delivery to the owner of record. The FAO notifies the responsible parties that all of the requirements of the NAO still apply and that the County may or will place restrictions on the parcel and lien the property to recover costs incurred if the violations are not corrected.

Health and Safety Violations are handled somewhat differently than code violations. If the Enforcement Officer feels that a Health and Safety Violation is impacting the occupants of a building or the general public the Enforcement Officer must provide all evidence of violations to the Division Chief (DC) for the Building and Safety Division of the Community Resource Agency for review and concurrence. If it is decided by the DC that a Health and Safety Violation exists, the DC has the option to either follow the general violation procedure and issue an OTC, or skip the OTC and go directly to issuance of a NAO.

Whistleblower Protection for CCD staff:

During the Grand Jury's investigation a number of issues were brought to light which, in the Grand Jury's opinion, have some influence on the process of Code Compliance violations and enforcement. Within the last few years a significant restructuring of County departments has occurred. Most of this restructuring has been due to budgetary constraints. The previous year's Grand Jury addressed this issue partially in their report on Compensation and Benefits. This is especially apparent within the CRA. Positions are being consolidated as employees are retiring or leaving for other employment. Bringing numerous former County Divisions together under the CRA has resulted in staff now having to learn the details of not one but multiple divisions when dealing with compliance violations. With an increased work load and furlough days being negotiated into County Employment Contracts; time becomes a critical component of the work

day, both in the daily workload and for training to maintain efficiency and updating staffs knowledge.

Further concern arose in the Grand Jury's study of Code Compliance violation handling. The issue arises if the complainant or the complaint involves an individual in county upper management or is an elected official. This is a stressful and uncomfortable situation for employees. The Grand Jury requested information on protection of employees from harassment by supervisory or other staff. In a study of materials provided it was noted that the County has very strong guidelines in place for Sexual Harassment, however protection for workers performing their duties when confronted with their superiors as a listed complainant in a Code Compliance violation was not evident in the materials provided.

The Grand Jury is also concerned as to why the TCBOS has chosen to eliminate any fines or late charges at the OTC stage. Considering the County's fiscal issues, funds collected as "Late Fees" could help offset County costs in the investigation and enforcement of code violations. It need not be an excessive amount, but it is a reminder to violators that it is less expensive to follow County Ordinances than to pay penalties for Code Compliance violations.

Findings

- F-1** The new Code Compliance violation process has been streamlined and is significantly more favorable to the citizens of Tuolumne County from a financial stand point.
- F-2** Document Retention for Code Compliance complaints can be either 3 or 5 years, depending on the status of the complaint.
- F-3** Elimination of Time tracking by County staff during the Opportunity to Correct stage could free up time better used in field work or other processing needs. Overall Time tracking is a good tool and has the potential for better time management spent on inspecting properties for violations.
- F-4** The new code compliance procedures resulted in a simpler matrix for the establishment of fines and fees for Code Compliance violations.
- F-5** Issuance of an OTC carries no late fees or penalties, only necessary permit fees are collected.
- F-6** Safeguards from retaliation for employees are not in an easily accessible or in an organized format.

Recommendations

- R-1** No Recommendation.
- R-2** As mass electronic storage costs decrease, the Grand Jury recommends that document retention should be increased to a 5 year minimum standard for all documents.

- R-3** Time Tracking of Code Compliance issues during the OTC phase should be eliminated.
- R-4** No Recommendation.
- R-5** A late penalty fee should be instituted at the OTC phase.
- R-6** Safeguards for employees, in conflicting situations arising from Code Compliance violations, should be clearly codified and posted for all employees and staff.

Request for Responses

Pursuant to Penal code section 933.05, the Grand Jury requests responses from as follows:

Tuolumne County Board of Supervisors
Tuolumne County Administrator
Tuolumne County Deputy County Counsel
Tuolumne County Community Resource Agency Director
Tuolumne County Community Resource Agency; Code Compliance Division, Chief Building Officer.

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda and open meeting requirements of the Brown Act.

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Tuolumne County Community Resources Agency, Annual Report 2012. February 12, 2013.

Tuolumne County Community Resources Agency, Code Compliance Procedure Manual.

Tuolumne County Sexual Harassment Prevention Policy Manual.

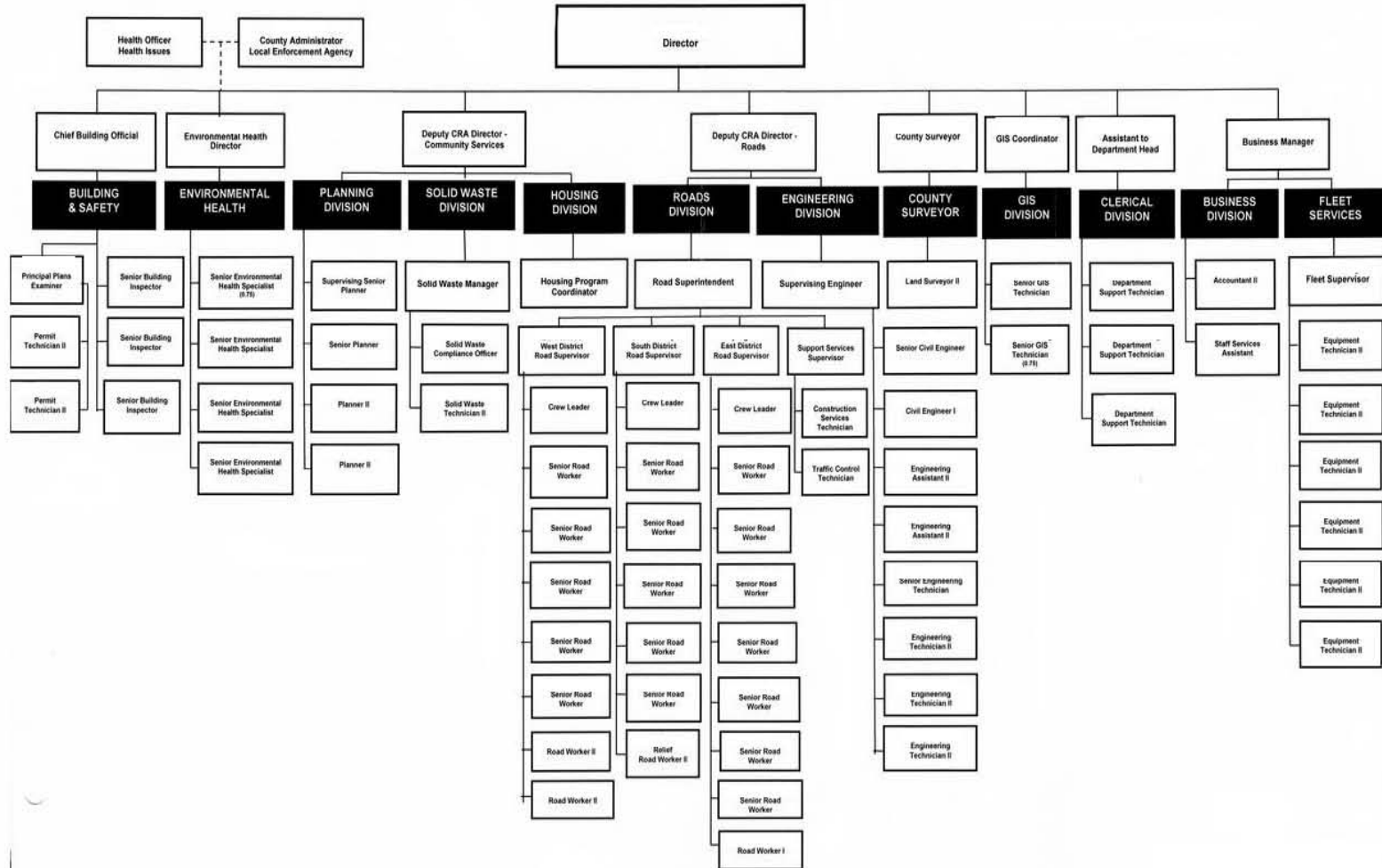
Tuolumne County Personnel Rules and Regulations.

Appendix A: Tuolumne County Community Resources Agency – Organizational Chart.

Appendix B: Tuolumne County Ordinance 3195 (amends Chapter 1.10 of the Tuolumne County Ordinance Code).

Appendix A - Tuolumne County Community Resources Agency Organizational Chart

TUOLUMNE COUNTY COMMUNITY RESOURCES AGENCY ORGANIZATIONAL CHART 2012



ORDINANCE NO. 3195

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF TUOLUMNE COUNTY TO
REPEAL AND REPLACE CHAPTER 1.10 OF THE TUOLUMNE COUNTY
ORDINANCE CODE WITH A NEW CHAPTER 1.10 REGARDING CODE
COMPLIANCE**

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The Board of Supervisors of the County of Tuolumne ordains as follows:

SECTION 1: Chapter 1.10 of the Tuolumne County Ordinance Code is repealed and replaced with a new Chapter 1.10 to read as follows:

Chapter 1.10

CODE COMPLIANCE

Sections:

- 1.10.010 Intent to secure compliance.**
- 1.10.020 Definitions.**
- 1.10.030 Administration of chapter.**
- 1.10.040 Violations; County administrative prosecution.**
- 1.10.050 Interference with work prohibited.**
- 1.10.060 Right of entry.**
- 1.10.070 General administrative provisions.**
- 1.10.080 No-permit violations.**
- 1.10.090 Opportunity to Correct.**
- 1.10.100 Notice and Order.**
- 1.10.110 Service procedures.**
- 1.10.120 Statute of limitations.**
- 1.10.130 Satisfaction of Opportunity to Correct or Notice and Order.**
- 1.10.140 Appeal of Notice and Order.**
- 1.10.150 Recording of pendency of abatement proceedings.**
- 1.10.160 Failure to pay fines.**
- 1.10.170 Effect of failure to comply with Notice and Order.**
- 1.10.180 Hearing Board.**
- 1.10.190 Hearing Board's authority.**
- 1.10.200 Hearing procedure; fees.**
- 1.10.210 Hearing decision; Final abatement order.**
- 1.10.220 Abatement by County.**
- 1.10.230 Summary abatement.**
- 1.10.240 Determination of abatement costs.**

- 1.10.250 Lien procedure.**
- 1.10.260 Special assessment procedure.**
- 1.10.270 Right to judicial review.**
- 1.10.280 Civil action.**
- 1.10.290 Order for treble costs of abatement.**
- 1.10.300 Attorneys' fees and costs.**
- 1.10.310 Application of chapter to open code compliance cases.**

1.10.010 Intent to secure compliance.

A. The Board of Supervisors of the County of Tuolumne intends to secure compliance with the provisions of this Code, including its adopted codes and ordinances. It is the intent of the Board of Supervisors in adopting this Chapter to provide a comprehensive method for the abatement of public nuisances and Code violations within the unincorporated area of the County of Tuolumne, in order to protect and promote the health, safety and general welfare of the people within the unincorporated area of the County.

B. Violations of this Code are injurious to the public health, safety and welfare. This Chapter is intended to promote and maintain a safe and desirable living and working environment and maintain and improve the quality of life in the County of Tuolumne by administering a fair and unbiased enforcement program to correct violations. Violations may affect the entire County or a considerable number of County inhabitants by impairing the safety of building occupants, harming the health or safety of neighborhood residents, or breaching the reciprocal rights and expectations of owners in zoning districts. It is the general policy of the Board of Supervisors that violations impacting health and safety take priority over other types of violations.

C. The provisions of this Chapter are to be supplementary and complementary to all of the provisions of the Tuolumne County Ordinance Code, State law, and any law cognizable at common law, or in equity, and nothing herein shall be read, interpreted or construed in any manner so as to limit any existing right or power of the County of Tuolumne or the District Attorney of the County of Tuolumne to take appropriate action to abate any and all public nuisances, or to prosecute or remedy violations of the Tuolumne County Ordinance Code.

1.10.020 Definitions.

The following words and terms when used in this Chapter shall be construed as defined in this Section, except as otherwise provided:

A. "Abate" or "abatement" shall mean any corrective action necessary to eliminate the condition or activity constituting a violation of this Chapter.

B. "Abatement costs" shall mean all costs related to abatement incurred by the County, including, but not limited to, administrative costs, costs for investigating the violation, for

monitoring and enforcing any abatement, for any physical abatement action by the County, and any ordered attorneys' fees. Abatement costs are deemed incurred for time expended by County employees and use of County facilities or equipment as well as any expenses of contractors hired by the County, and these costs shall be calculated at the rate(s) determined by the County to reflect all direct and indirect costs. The Board of Supervisors may set standard abatement costs by resolution.

C. "Code Compliance Officer" shall mean the County Counsel and his/her designee(s).

D. "Correct" or "correction" shall mean abate or abatement.

E. "Days" shall mean calendar days.

F. "Department head" shall mean the administrative director or designee of a department of the County of Tuolumne with the authority to enforce provisions of this Code. The term also includes the Code Compliance Officer.

G. "Enforcement officer" shall mean any County officer or employee, including his/her designee, with the authority to enforce this Code, its adopted codes or applicable State codes.

H. "Final Abatement Order" shall mean a decision and order, determining the existence of a violation, imposing penalties, and ordering abatement.

I. "Hearing Board" shall mean the Board of Supervisors or other hearing board designated by the Board of Supervisors pursuant to Section 1.10.180.

J. "No-permit violation" shall mean a violation for failure to obtain a permit.

K. "Notice and Order" or "NAO" shall mean the written notice provided to an owner and/or other responsible person to inform that person of a violation of this Code, its adopted codes or applicable State codes.

L. "Opportunity to Correct" shall mean the written notice provided to an owner and/or responsible person describing the actions necessary, and the time within which (not to exceed ninety (90) days) to correct a violation.

M. "Owner" shall mean the owner of a parcel subject to this Chapter, as disclosed in the records of the County Tax Assessor at the time an Opportunity to Correct is given or the Notice and Order is served.

N. "Responsible person" shall mean either of the following:

1. Any individual or legal entity who is the owner, tenant, co-tenant, lessee, sub-lessee, occupant or other person with any right to possession of the real property, owner or authorized agent of any business, company or entity, or the parent or the legal guardian of

monitoring and enforcing any abatement, for any physical abatement action by the County, and any ordered attorneys' fees. Abatement costs are deemed incurred for time expended by County employees and use of County facilities or equipment as well as any expenses of contractors hired by the County, and these costs shall be calculated at the rate(s) determined by the County to reflect all direct and indirect costs. The Board of Supervisors may set standard abatement costs by resolution.

C. "Code Compliance Officer" shall mean the County Counsel and his/her designee(s).

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M. "Owner" shall mean the owner of a parcel subject to this Chapter, as disclosed in the records of the County Tax Assessor at the time an Opportunity to Correct is given or the Notice and Order is served.

N. "Responsible person" shall mean either of the following:

1. Any individual or legal entity who is the owner, tenant, co-tenant, lessee, sub-lessee, occupant or other person with any right to possession of the real property, owner or authorized agent of any business, company or entity, or the parent or the legal guardian of

any person under the age of eighteen (18) years, who causes, permits or maintains a violation of this Code, its adopted codes or applicable State codes.

2. Any individual, legal entity or the parent or the legal guardian of any person under the age of eighteen (18) years, who causes, permits or maintains a violation of this Code, its adopted codes or applicable State codes.

O. "Violation" shall mean any of the following:

1. A public nuisance as defined in Civil Code section 3479 et seq.; or

2. Any condition caused or permitted to exist in violation of any of the provisions of this Code, or its adopted codes, or State codes. A violation of this Code includes, but is not limited to, all violations of this Code and its adopted codes, or failure to comply with any condition imposed by any entitlement, permit, agreement or environmental document issued or approved under the provisions of this Code.

P. "Violations impacting health and safety" shall mean violations of the provisions of this Code that may cause deleterious effects to the health and safety of the public and shall include, but not be limited to: substandard housing, dangerous buildings, septic system failures and accumulated solid waste.

1.10.030 Administration of chapter.

A. The Board of Supervisors hereby establishes the office of Tuolumne County Code Compliance Officer, serving at the pleasure of the Board, who shall implement this Chapter except as otherwise provided. In addition to other County officers with contracting authority, the Code Compliance Officer is authorized to enter into contracts and approve claims for expenditures for the purposes set forth in this Section.

B. The Code Compliance Officer may, for good cause at any time, reduce or eliminate a monetary penalty imposed on a Notice and Order or a Final Abatement Order. Whether or not good cause exists to reduce or eliminate any monetary penalty shall be determined by the Code Compliance Officer at his/her sole discretion. Notwithstanding the delegation authority provided generally by this Code, the authority to reduce or eliminate any monetary penalty shall rest only with the Code Compliance Officer and shall not be delegated to any other person.

C. There is hereby created a Code Compliance Trust Fund for the purpose of financing costs of physical abatement incurred by the County, payment of any attorneys' fees ordered paid by the County, and any other costs related to the code compliance program approved by the Board of Supervisors. Administrative penalties recovered for violations shall be credited to the Code Compliance Trust Fund until its fund balance reaches a level established by the Board of Supervisors as necessary to ensure these purposes may be timely accomplished, after which the penalties shall be credited to the General Fund.

D. Recovered abatement costs shall be credited pro-rata to the revenue accounts of the respective department(s) whose abatement activities are included in the recovered costs.

1.10.040 Violations; County administrative prosecution.

A. Except for cases impacting health and safety, an enforcement officer may seek abatement of a violation under the provisions of this Chapter only in the following circumstances:

1. Submission of a written or oral complaint of violation to the County;
2. Enforcement officer discovery of a violation, other than a violation of Title 17;
3. Enforcement officer discovery of a violation of a permit or condition of a permit;
4. Enforcement officer discovery of a violation during review of any application submitted to a County department;
5. Discovery of a violation observable during the process of investigating any violation of law.

B. Prosecution of violations pursuant to this Chapter is up to the discretion of the County.

C. Identity of a complainant shall be confidential and not subject to disclosure.

D. Except for cases impacting health and safety, in the event that the County has not recorded a Final Administrative Order within two (2) years after the date of the circumstances listed in Subdivision A, the case shall be deemed closed without the right to reopen or refile under the provisions of this Chapter.

1.10.050 Interference with work prohibited.

No person shall obstruct, impede or interfere with any officer, employee, contractor or authorized representative of the County, or with any person who owns or holds any estate or interest in any parcel, whenever such officer, employee, contractor or authorized representative of the County, or person having an interest or estate in such parcel, is engaged in the work of investigating or abating any violation, as authorized or directed by the provisions of this Chapter, or in performing any necessary act preliminary to or incidental to such work authorized or directed pursuant to this Chapter.

1.10.060 Right of entry.

Enforcement officers may enter on a parcel at reasonable times to make inspections for violations of this Code or to abate nuisances as authorized by this Chapter. When such entry will infringe on the constitutional right of privacy, entry shall be made with consent of one with apparent authority, by authority of an inspection warrant, or as otherwise provided by law. Inspection warrants or other authority for entry may be obtained by the enforcement officer with the

assistance of the County Counsel.

1.10.070 General administrative provisions.

A. Each and every day or portion thereof that a violation of this Code, its adopted codes or applicable State codes exists constitutes a separate and distinct offense.

B. A civil fine assessed by means of a Notice and Order issued by an enforcement officer shall be payable directly to the County of Tuolumne.

C. Except where otherwise provided in this Code, fines shall be assessed in the amounts specified by resolution of the Board of Supervisors, or where no amount is specified, fines shall be assessed in an amount not exceeding:

1. One hundred dollars (\$100.00) for a first violation;
2. Two hundred dollars (\$200.00) for a second violation of the same provision (other than a building and safety code provision) within one year, and five hundred dollars (\$500.00) for a violation of a building and safety code provision;
3. Five hundred dollars (\$500.00) for each additional violation of the same provision (other than a building and safety code provision) within one year, and one thousand dollars (\$1,000.00) for a violation of a building and safety code provision.

1.10.080 No-permit violations.

A. To correct a no-permit violation, the owner and/or other responsible person shall:

1. Apply for the required permit within the time period set forth in the Opportunity to Correct or Notice and Order and pay any application fee;
2. Reasonably pursue the permit application process, including, when requested, providing information for environmental or other permit review, and revising plans;
3. Approve or otherwise respond within ten (10) days to a notice of proposed conditions; and
4. Pay for and obtain a permit within ten (10) days of telephonic or written notice by the County that the permit is ready to be issued.

B. Failure to final the permit by completing all requirements of the permit and obtaining all required inspections or meet any conditions thereof may result in the initiation of a new code compliance case under the provisions of this Chapter.

1.10.090 Opportunity to Correct.

A. Except for violations impacting health and safety, the enforcement officer shall send the owner and/or other responsible person an Opportunity to Correct prior to issuing a Notice and Order.

B. An Opportunity to Correct shall contain the following information:

1. Date, approximate time and address or definite description of the location where the violation(s) was observed;
2. Name and address, if known, of the owner and/or other responsible person;
3. The code section(s) or condition(s) violated and a description of the violation(s);
4. A description of the action required to correct the violation(s), including, when repair or removal is economically infeasible, demolition of structures or destruction of real or personal property;
5. A correction date and an explanation of the consequences of failure to correct the violation(s);
6. The amount of the fine for the violation(s) and potential for abatement costs liability, if not corrected by the correction date;
7. An explanation of the procedures to apply the statute of limitations set forth in Section 1.10.120 and the potential for reassessment of the property by the County Assessor; and
8. The name and signature of the enforcement officer.

1.10.100 Notice and Order.

A. An enforcement officer may issue a Notice and Order for violations impacting health and safety or for violations for which the Opportunity to Correct has expired.

B. Each Notice and Order shall contain the following information:

1. Date, approximate time and address or definite description of the location where the violation(s) was observed;
2. Name and address, if known, of the owner and/or other responsible person;
3. The code section(s) or condition(s) violated and a description of the violation(s);

4. A description of the action required to correct the violation(s), including, when repair or removal is economically infeasible, demolition of structures or destruction of real or personal property;
 5. The amount of the fine for the violation(s), current amount of abatement costs and the potential for additional abatement costs liability;
 6. An explanation of how the fine shall be paid, the deadline by which it shall be paid, and the place to which the fine shall be paid;
 7. An explanation of how the abatement costs are calculated and how the abatement costs shall be paid, the deadline by which it shall be paid, and the place to which the abatement costs shall be paid;
 8. An order prohibiting the continuation or repeated occurrence of the code violation(s) described in the Notice and Order;
 9. If applicable, the decision of the Code Compliance Officer with regard to the application of the statute of limitations provisions of Section 1.10.120 and the potential for reassessment of the property by the County Assessor;
 10. Identification of rights of appeal, including the time within which the Notice and Order may be contested and the place to submit a written appeal request to contest the Notice and Order; and
 11. The name and signature of the enforcement officer.
- C. If, after correction, the same violation is committed on the same parcel within twelve (12) months, another Notice and Order may be issued.
- D. Unless a written appeal request is timely filed on a Notice and Order:
1. The violation(s) shall be deemed admitted, the fine and obligation for abatement costs shall be deemed accepted, and the Notice and Order shall be deemed a Final Abatement Order as the final determination on these issues;
 2. The enforcement officer shall send the owner and/or other responsible person a copy of the Final Abatement Order;
 3. The administrative fines shall be paid to the issuing department within ten (10) days after the expiration of the appeal period.
 4. The abatement costs shall be paid within ten (10) days after being served with the demand from the Code Compliance Officer pursuant to Section 1.10.240.

1.10.110 Service procedures.

A. An Opportunity to Correct or Notice and Order on forms approved by the County Counsel shall be issued to the owner and/or other responsible person by an enforcement officer for violations of this Code, its adopted codes or applicable State codes in the either of the following manners:

1. Personal service.

- i. The enforcement officer shall attempt to locate and personally serve the owner and/or other responsible person and, if possible, obtain the signature of the owner and/or other responsible person on the Opportunity to Correct or Notice and Order.
- ii. If the served owner and/or other responsible person refuses or fails to sign the Opportunity to Correct or Notice and Order, the failure or refusal to sign shall not affect the validity of the Opportunity to Correct or Notice and Order or of subsequent proceedings.

2. Service of the Opportunity to Correct or Notice and Order by mail.

- i. To serve by mail, the Opportunity to Correct or Notice and Order shall be mailed to the owner and/or other responsible person by certified mail, postage prepaid with a return receipt requested. Simultaneously, the Opportunity to Correct or Notice and Order shall be sent by first class mail.
- ii. Service by mail shall be sent to the owner and/or other responsible person's address as shown on public records or as known to the County. If the Opportunity to Correct or Notice and Order is sent by certified mail and returned unsigned, then service shall be deemed effective by first class mail, provided the Opportunity to Correct or Notice and Order sent by the first class mail is not returned.
- iii. Service of the Opportunity to Correct or Notice and Order shall be deemed effective three (3) days following deposit of the Opportunity to Correct or Notice and Order in the U.S. mail.

B. Service of the Opportunity to Correct or Notice and Order by posting notice.

- 1. If the enforcement officer does not succeed in serving the owner and/or other responsible person personally or by certified or first class mail, the enforcement officer shall post the Opportunity to Correct or Notice and Order in a conspicuous location on any real property within the County in which the County has knowledge that the owner and/or other responsible person has a legal interest.

2. Posting of the Opportunity to Correct or Notice and Order shall be deemed effective service as of the date that the Opportunity to Correct or Notice and Order is actually posted.

C. Proof of service of notices shall be made by written declaration under penalty of perjury executed by the person effecting service, declaring the place, date and manner in which service was made. An unsigned copy of the proof of service shall be attached to a notice being served by mail. A dated copy of any other paper shall be proof of mailing on the specified date.

D. Failure to receive actual notice specified in this Chapter does not affect the validity of proceedings conducted hereunder.

1.10.120 Statute of limitations.

A. Except for violations impacting health and safety, an Opportunity to Correct or Notice and Order shall not be issued for violations which have been in existence for five (5) years prior to the date of discovery.

B. If an owner and/or other responsible person believes an Opportunity to Correct has been issued in conflict with this Section, he or she may file a request for withdrawal of the Opportunity to Correct with the Code Compliance Officer, along with evidence supporting the claim within ten (10) days of service of the Opportunity to Correct. The correction date listed in the Opportunity to Correct is stayed until ten (10) days after Code Compliance Officer's decision is mailed to the owner and/or responsible person.

C. The issue of the statute of limitations and the Code Compliance Officer's decision thereon may be included in an appeal of a Notice and Order.

D. Notwithstanding the application of the statute of limitations pursuant to this Section, all allegations of no-permit violations shall be referred to the County Assessor's Office for potential reassessment.

1.10.130 Satisfaction of Opportunity to Correct or Notice and Order.

A. Upon receipt of an Opportunity to Correct, the owner and/or other responsible person shall do the following:

1. Correct the violation(s), if the violation(s) is of such a nature that it can be corrected. If a violation(s) is corrected before the correction date provided on the Opportunity to Correct, no fine shall be imposed.

2. If additional time is needed to correct the violation, submit a written request to the enforcement officer prior to the correction date. Such request shall include justification for any extension and a defined plan to complete abatement within a reasonable

timeframe. The enforcement officer may deny the extension request upon concurrence of the Code Compliance Officer.

B. Upon receipt of a Notice and Order, the owner and/or other responsible person shall do the following:

1. Correct the violation(s), if the violation(s) is of such a nature that it can be corrected.
2. Pay the fine to the County within ten (10) days after the expiration of the appeal period on the Notice and Order. All fines assessed shall be payable to the County of Tuolumne. Payment of a fine shall not excuse or discharge the failure to correct the violation(s) nor shall it bar further enforcement action by the County.
3. Pay the County abatement costs within ten (10) days after being served with the demand from the Code Compliance Officer pursuant to Section 1.10.240.

1.10.140 Appeal of Notice and Order.

A. Any recipient of a Notice and Order may contest that there is a violation of this Code, its adopted codes or State codes or that he or she is the responsible person by filing a written request with the Code Compliance Officer within fifteen (15) days from the date of issuance of the Notice and Order.

B. Any appeal of a Notice and Order shall include a detailed written explanation as to the grounds for appeal of the Notice and Order. Any appeal shall be limited to such written grounds.

C. Hearings on appeals of Notice and Orders shall be conducted pursuant to Section 1.10.200.

1.10.150 Recording of pendency of abatement proceedings.

A. Upon the issuance of a Final Abatement Order determining the existence of violations pursuant to Sections 1.10.100(D) or 1.10.210, the Code Compliance Officer shall record in the County Recorder's Office a notice of pendency of abatement proceedings describing the violation and containing a notice of potential lien against the parcel for abatement costs and fines.

B. Upon recordation, the notice shall have the same effect as a notice described in Section 405.24 of the Code of Civil Procedure. If a violation is abated and any and all abatement costs and fines are paid, a withdrawal of the notice of pendency of abatement proceedings shall be recorded within five (5) business days of receipt by the Code Compliance Officer of evidence of abatement, or payment of abatement costs and fines, whichever is later.

1.10.160 Failure to pay fines.

A. The failure of any person to pay the administrative fines or abatement costs assessed by a Notice and Order within the time specified on the NAO may result in the matter being referred to the County Counsel to file a claim with the applicable court. Alternatively, the County may pursue any other legal remedy to collect the administrative fines and abatement costs, including, but not limited to, a lien pursuant to Section 1.10.250 or assessment pursuant to Section 1.10.260.

B. Any person who fails to pay to the County any fine or abatement costs imposed pursuant to this Chapter on or before the date that fine or abatement costs are due also shall be liable for the payment of a onetime late payment charge in the amount of one hundred and twenty-five dollars (\$125.00), plus interest at the maximum rate permitted by law.

C. The payment of any administrative fine or abatement costs shall not excuse or otherwise provide any defense to the continued violation of any provision of this Code.

1.10.170 Effect of failure to comply with Notice and Order.

A. Following the issuance of a Notice and Order, and continuing until either the action is overturned, or any applicable abatement is completed and any abatement costs and fines are paid, no permit or other entitlement shall be approved, except, if fines and abatement costs are paid, a permit necessary to correct a violation, or to respond to an Act of God, a health or safety condition, or an unintended disaster, under any provision of this Code for any use, structure, or activity on the same parcel. Following the expiration of the time period to appeal a Notice and Order, the enforcement officer shall inform all County departments with enforcement authority over provisions of this Code of this restriction.

B. After the issuance of a Notice and Order for a no-permit violation for a use, structure, activity or condition that cannot be returned to the pre-violation state, if a permit application to correct the violation is denied, the owner and/or other responsible person shall be prohibited from obtaining any permit or other entitlement under any provision of this Code for the parcel, except, if applicable fines and abatement costs are paid, a permit or entitlement necessary to respond to an Act of God, a health or safety condition, or an unintended disaster, for a period up to five (5) years, as determined by the Code Compliance Officer. Immediately following the denial of a permit application, the enforcement officer shall inform all other County departments with enforcement authority over provisions of this Code of this prohibition, record a notice of action on the parcel, and serve a notice on the owner and any other responsible person. This prohibition shall apply to all successors-in-interest to the owner.

C. For a no-permit violation of Chapter 14.08 or sections 17.44.050 or 17.45.050 of this Code, the owner shall be prohibited from obtaining any permit or entitlement under any provision of the Tuolumne County Ordinance Code made subject to this Chapter for the parcel, except, if applicable penalties are paid, a permit necessary to correct a violation, or to

respond to an Act of God, a health or safety condition, or an unintended disaster, for a period up to five (5) years as determined by the Code Compliance Officer. An enforcement officer shall immediately inform the Community Resources Agency Director and Code Compliance Officer of a violation of any of the codes cited in this subdivision, and shall inform the Historic Preservation Review Commission Demolition Review Committee, as established pursuant to Section 14.08.040 of this Code. Following the expiration of the time period to seek to overturn a Notice and Order, the enforcement officer shall inform all County departments with enforcement authority over provisions of this Code of this restriction, and record a notice of action on the parcel. This prohibition shall apply to all successors-in-interest to the owner. In addition, for a no-permit violation of Chapter 14.08, following the expiration of the time periods to seek to overturn a Notice and Order, the department head shall file a complaint with the Contractor's State License Board against any contractor or contracting company involved with the violation.

1.10.180 Hearing Board.

A. Board of Supervisors. The Board of Supervisors may act as the Hearing Board for any appeal of a Notice and Order pursuant to this Chapter.

B. Hearing Board. There is established a hearing board to be known as the "Code Compliance Hearing Board" whose subject matter jurisdiction shall be over appeals of NAOs pursuant to this Chapter.

1. The Hearing Board shall consist of three members who shall be County residents appointed by the Board of Supervisors. Effort shall be made to appoint individuals with experience in applying legal principles and/or law enforcement experience.

2. Terms. The term of office of each member shall be for three (3) years and until the appointment of his/her successor.

3. Vacancies and removal.

i. Vacancies on the Hearing Board shall be filled as set forth in Subsection (B)(1) for the unexpired term. A vacancy on the Hearing Board shall occur automatically on the happening of any of the following events before the expiration of the term:

(a) Removal of the incumbent;

(b) Death or resignation of the incumbent;

(c) The incumbent's ceasing to be a County resident; or

(d) The incumbent's absence from three consecutive meetings or his/her absence from four meetings in any one calendar year.

- ii. The Code Compliance Officer shall certify the happening of a vacating event to the Board of Supervisors. The Board of Supervisors may waive a vacating event for any member.
- 4. Officers. Annually, the Hearing Board shall elect a chair from its members, and any other officers from its members as is necessary to conduct its business. The officers shall serve a term of one year.
- 5. The Hearing Board shall adopt rules for the transaction of its business and shall keep a record of its transactions, findings, determinations and decisions, which records shall be public records. All meetings of the Hearing Board are subject to the Ralph M. Brown Act.
- 6. A majority of the authorized positions of the Hearing Board constitutes a quorum for the transaction of business. No act of the Hearing Board shall be valid unless a majority of the members present concur therein, except as otherwise required by state law.
- 7. Compensation. The members of the Hearing Board shall serve without compensation, but may receive such actual and necessary expenses as are incurred in carrying out their duties.
- 8. Legal Counsel. The District Attorney shall provide legal counsel to the Hearing Board as needed in furtherance of its duties under this Chapter.

1.10.190 Hearing Board's authority.

The Hearing Board is authorized to:

- A. Conduct hearings on appeals of NAOs;
- B. Issue subpoenas;
- C. Receive evidence;
- D. Administer oaths;
- E. Rule on questions of law and the admissibility of evidence; and
- F. Prepare a record of the proceedings.

1.10.200 Hearing procedure; fees.

- A. An appeal request shall be deemed filed upon receipt of a written appeal request by the Code Compliance Officer and the payment of any hearing fee, which may be established by resolution of the Board of Supervisors, within the specified time frame. Any hearing fee shall not exceed the reasonable cost to the County of a hearing.

B. The enforcement officer shall prepare a hearing report, under the direction of the Code Compliance Officer, including investigative observations, permit history about the parcel or condition, enforcement efforts and a description of the violation(s). Copies of the hearing report shall be provided to the Hearing Board and person requesting the hearing at least five (5) days prior to the hearing date.

C. The hearing before the Hearing Board shall be set for a date that is not less than fifteen (15) days from the date of hearing request. The person requesting the hearing shall be notified of the time and place set for the hearing at least fifteen (15) days prior to the date of the hearing.

D. The Hearing Board shall only consider evidence that is relevant to the hearing matter.

E. The person requesting the hearing shall be given the opportunity to testify and present witnesses and evidence concerning the hearing matter.

F. The failure of the person requesting the hearing or his/her representative to appear at the hearing shall constitute a failure to exhaust administrative remedies. Failure to appear for the hearing shall not affect the proceedings, the hearing will proceed and all matters will be resolved without the participation of the person requesting the hearing.

G. Failure to raise any issue at the hearing will be considered a waiver of that issue, and the County will contend it cannot be raised in any judicial review or enforcement proceeding or action.

H. Any documents submitted by the County shall constitute prima facie evidence of the respective facts contained in those documents.

I. At least ten (10) days prior to the date of the hearing, the person requesting the hearing shall be provided with copies of the NAO, reports and other documents submitted or relied upon by the County. No other discovery is permitted. Formal rules of evidence shall not apply.

J. Except as provided herein, Government Code section 11513 shall apply to the hearing and the term "respondent" shall refer to the owner and/or other party appearing in response to the notice of hearing. Official notice shall be taken of any fact which appears in any of the official records of the County or any of its departments, and of any fact in the same manner as is judicial notice pursuant to Evidence Code sections 451, 452, 453, 454, 455 and 456. The Hearing Board may question witnesses.

K. Members of the Hearing Board may inspect the parcel prior to or during the hearing. Members of the Hearing Board shall state for the record during the hearing, the material facts observed and the conclusion(s) drawn from any inspection.

L. The Hearing Board may continue the hearing and request additional information from the County or the person requesting the hearing prior to issuing a written decision.

M. The County shall establish the existence of a violation by a preponderance of the evidence.

N. The oral proceedings at all hearings shall be reported electronically by a tape recorder provided by the County, and under the control of the Hearing Board. Any party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense.

1.10.210 Hearing decision; Final abatement order.

A. After considering all of the testimony and evidence submitted at the hearing, the Hearing Board shall make a determination on the appeal and direct the Code Compliance Officer to draft a written Final Abatement Order for the Chair's signature within ten (10) days of the date of the hearing. The Final Abatement Order shall include the factual and legal issues presented, the Hearing Board's determination and the reasons for that determination.

B. If the Hearing Board determines that one or more violations exist, the Final Abatement Order shall also contain the following provisions:

1. An order requiring the owner and/or other responsible person in violation to commence abatement of the violation(s), not later than fifteen (15) days after the decision is final, and to complete abatement within such time as specified by the Hearing Board, and describing the action to be taken to abate the violation;
2. An order authorizing the County to physically abate the violation if it is not timely abated by the owner and/or other responsible person;
3. An order for the owner and/or other responsible person in violation to pay all abatement costs and fines imposed by the Notice and Order; and
4. If requested by the County prior to the hearing, an order directing payment of the County's attorneys' fees, which payment may be allocated among multiple parties, if any.

C. If the Hearing Board determines there has been no violation, the Final Abatement Order shall also contain the following provisions:

1. An order directing the department head to remove any stop work order issued pursuant to the Notice and Order; and
2. If the County requested attorneys' fees prior to the hearing, a notice that if attorneys' fees or costs are claimed by the prevailing party, a statement of any fees and costs shall be

served on the Code Compliance Officer within ten (10) days of service of the Final Abatement Order.

D. The Final Abatement Order may not be reconsidered by the Hearing Board, except to correct clerical errors or noncompliance with explicit provisions of this Chapter. Reconsideration must be requested of the Hearing Board within ten (10) days of service of the Final Abatement Order, and a copy served on the other party. Only one such request may be made. If the request is not timely received, the Final Abatement Order may not be reconsidered. The Hearing Board shall either deny the request, or issue an amended Final Abatement Order incorporating any changes required by the reconsideration, which shall be subject to the procedures in this subdivision.

E. The Hearing Board shall deliver the Final Abatement Order, and the record of the proceedings, including the audio tape of testimony, to the clerk of the Board of Supervisors who shall immediately forward a certified copy of the decision to the Code Compliance Officer and maintain the original Final Abatement Order and record of proceedings as a record of the Board of Supervisors.

F. Upon receipt of the Final Abatement Order and the record of the proceedings, the Board of Supervisors may adopt the Order on its consent calendar without further notice of hearing, or may set the matter for a de novo hearing before the Board of Supervisors.

G. The person requesting the hearing shall be served with a copy of the Board of Supervisors' decision, mailed by first-class mail, postage prepaid, including a copy of the affidavit or certificate of mailing. The Board of Supervisors' decision is final for purposes of Code of Civil Procedure section 1094.6 upon the date of mailing.

1.10.220 Abatement by County.

A. Wherever the required abatement is not completed within the time specified in a Final Abatement Order, the Code Compliance Officer may cause the completion of abatement activities as described in the Order.

1. The Code Compliance Officer is authorized to obtain any inspection or enforcement warrant necessary to enforce the Order.

2. The Code Compliance Officer is authorized to file a court action or proceeding to enforce the Order.

3. The Code Compliance Officer may refer the abatement to the department head with primary enforcement responsibility who shall cause the ordered abatement to be completed.

4. All departments of the County shall assist and cooperate with the Code Compliance Officer and any department head supervising the abatement.

B. Each department performing abatement activities shall, upon completion of the activity, report abatement costs to the Code Compliance Officer.

1.10.230 Summary abatement.

A. If the department head determines, with concurrence by the Code Compliance Officer, there exists a violation, which is of such a nature as to be an imminent threat to the public health or safety, and if not abated would, during the pendency of the proceedings, subject the public to potential harm of a serious nature, the same may be abated forthwith without compliance with the notice and pre-abatement hearing provisions of this Chapter. When repair or removal of the condition is economically infeasible, abatement may include demolition of structures or destruction of real or personal property. Notwithstanding the foregoing, a reasonable effort shall be made to notify the owner of the parcel in advance of summary abatement.

B. Following a summary abatement action, hearing proceedings shall be commenced under this Chapter; and provided the Final Abatement Order shall not include an abatement order, but shall include a determination of whether the summary abatement satisfied the conditions of Subsection A.

C. Costs. The enforcement officer shall keep an itemized account of the costs incurred by the County in removing or isolating such condition or conditions. Such costs may be recovered to the same extent and in the same manner that abatement costs are recovered pursuant to Sections 1.10.250 and 1.10.260.

1.10.240 Determination of abatement costs.

A. When abatement has been completed, the Code Compliance Officer shall serve a demand for payment of abatement costs which includes an itemized statement of the costs. If abatement costs are \$2,000.00 or more, the demand for payment shall provide the opportunity to request the assessment to be entered and paid in three annual installments, which request must be made in writing to the Code Compliance Officer within thirty (30) days.

B. Within thirty (30) days from the date of service of the demand, the owner and/or responsible person may submit a claim that:

1. One or more abatement activities was not actually performed, or
2. Part or all the costs have been paid. The submission shall specify the ground(s) for the claim, and include all evidence on which the claim is based or it will not be considered.

C. If payment of costs is not made within thirty (30) days, and no timely claim is submitted, the costs set forth in the payment demand shall be conclusively presumed correct.

D. If a claim is timely submitted, the Code Compliance Officer shall review the evidence submitted, make a determination on the issues raised, and serve a new demand for payment, revised as necessary.

1.10.250 Lien procedure.

A. If payment is not received within thirty (30) days after service of the demand pursuant to Section 1.10.240, the County Counsel shall serve notice of the lien in the same manner as summons in a civil action in accordance with Code of Civil Procedure section 415.10 et seq. If the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten (10) days and publication thereof in the Union Democrat or other newspaper of general circulation in Tuolumne County. The period of notice commences upon the first day of publication and terminates at the end of the tenth day, including the first day therein. Publication shall be made on each day on which the newspaper is published during the ten (10) day period.

B. After notice has been served, the lien shall be recorded in the County Recorder's Office and, from the date of recording, shall have the force, effect and priority of a judgment lien.

C. The lien shall identify:

1. The amount of the lien;
2. The County as the agency on whose behalf the lien is imposed;
3. The date of the Final Abatement Order;
4. The street address, legal description and assessor's parcel number of the parcel on which the lien is imposed; and
5. The name and address of the recorded owner of the parcel.

D. In the event that the lien is discharged, released or satisfied, through either payment or foreclosure, notice of the discharge containing the information specified in Subsection C shall be recorded by the County Counsel.

E. A lien may be foreclosed by an action brought by the County for a money judgment.

F. The County may recover from the property owner any costs incurred in the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien.

1.10.260 Special assessment procedure.

A. If payment is not received within thirty (30) days after service of the demand pursuant to Section 1.10.240, the County Counsel shall serve notice by certified mail, to the property

owner, if the property owner's identity can be determined from the county assessor's or county recorder's records. The notice shall be given at the time of imposing the assessment and shall specify that the property may be sold after three (3) years by the tax collector for unpaid delinquent assessments. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice.

B. The assessment may be collected at the same time and in the same manner as ordinary County taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary County taxes. All laws applicable to the levy, collection and enforcement of County taxes shall be applicable to the special assessment. However, if any real property to which the cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of the taxes would become delinquent, then the cost of abatement shall not result in a lien against the real property but instead shall be transferred to the unsecured roll for collection.

C. Subject to the requirements applicable to the sale of property pursuant to Section 3691 of the Revenue and Taxation Code, the County may conduct a sale of vacant residential developed property for which the payment of that assessment is delinquent.

D. Notices or instruments relating to the special assessment shall be entitled to recordation.

1.10.270 Right to judicial review.

A. Any person aggrieved by a decision of the Board of Supervisors may obtain review of the decision by filing a petition for review with the Tuolumne County Superior Court in accordance with the timelines and provisions as set forth in Government Code or Code of Civil Procedure, as applicable.

B. Nothing contained in this Section shall be construed to prohibit any person from seeking prompt judicial review of a decision of a County official regarding the issuance, denial, suspension or revocation of a permit or license for an activity protected by the First Amendment of the United States Constitution as provided by Code of Civil Procedure section 1094.8. The County shall comply with all requirements described therein for prompt judicial review.

1.10.280 Civil action.

The County Counsel, by and at the request of the Board of Supervisors or County staff, may institute an action in any court of competent jurisdiction to restrain, enjoin or abate the condition(s) found to be in violation of the provisions of this Code, including its adopted codes, or State codes as provided by law. The County Counsel, by and at the request of the Board of Supervisors or County staff, may institute an action in any court of competent jurisdiction to collect a civil debt owing to the County.

1.10.290 Order for treble costs of abatement.

Upon entry of a second or subsequent civil or criminal judgment within a two-year period finding that an owner of property is responsible for a condition that may be abated in accordance with the provisions of this Chapter, except for conditions abated pursuant to Section 17980 of the Health & Safety Code, relating to abandoned buildings, the court may order the owner to pay treble the costs of the abatement, as authorized by Government Code section 25845.5. Costs of abatement shall include, without limitation by reason of enumeration, all administrative costs of the County.

1.10.300 Attorneys' fees and costs.

A. In any action, administrative proceeding or special proceeding commenced by the County to abate a public nuisance, to enjoin violation of any provision of this Code, including its adopted codes, or State codes or to collect a civil debt owing to the County, if the County elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees, the prevailing party shall be entitled to recover all costs incurred therein, including reasonable attorneys' fees and costs of suit. In no action, administrative proceeding or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the County in the action or proceeding.

B. The County shall be considered a prevailing party entitled to attorneys' fees under Subsection (A) when it can demonstrate that:

1. Its lawsuit was the catalyst motivating the defendant to provide the primary relief sought;
2. The lawsuit was meritorious and achieved its result by "threat of victory;" and
3. The County reasonably attempted to settle the litigation before filing the lawsuit.

1.10.310 Application of chapter to open code compliance cases.

A. Continued prosecution of any code compliance cases open as of the effective date of this Chapter, including collection of any penalties accrued prior to the effective date of this Chapter, shall proceed pursuant to the provisions of this Chapter as provided in this Section.

B. Any code compliance cases open as of the effective date of this Chapter shall be deemed to have been opened on the effective date of this Chapter for purposes of Section 1.10.040(D).

C. Section 1.10.120 shall apply to any code compliance case open as of the effective date of this Chapter which is not subject to a final Notice of Violation, Final Administrative Order, final Notice and Order or Final Abatement Order.

D. Any code compliance case open as of the effective date of this Chapter for which the property owner and/or responsible person has requested an appeal hearing shall proceed

under hearing procedures pursuant to the provisions of this Chapter. If the Hearing Board determines that one or more violations exist, any penalties and abatement costs accrued prior to the effective date of this Chapter shall be imposed in addition to any other costs authorized by this Chapter.

E. Any code compliance case open as of the effective date of this Chapter which is subject to a final Notice of Violation, Final Administrative Order, final Notice and Order or Final Abatement Order shall be subject to any penalties and abatement costs accrued prior to the effective date of this Chapter and shall be deemed subject to a Final Abatement Order pursuant to this Chapter to be recorded pursuant to Section 1.10.150.

F. Any code compliance case open as of the effective date of this Chapter which is not subject to a final Notice of Violation, Final Administrative Order, final Notice and Order or Final Abatement Order shall be processed in accordance with the provisions of this Chapter in the same manner as a new code compliance case and shall not be subject to any penalties and abatement costs accrued prior to the effective date of this Chapter.

SECTION 2: If any provision of the Ordinance or the application thereof to any person or circumstances is for any reason held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provisions or applications thereof, and to this end the provisions of this Ordinance are severable.

SECTION 3: This Ordinance shall take effect thirty (30) days after its adoption. The Chief Deputy Clerk of the Board of Supervisors is hereby authorized and directed to publish a summary of this Ordinance in the Union Democrat, a newspaper of general circulation printed and published in the County of Tuolumne, State of California, prior to fifteen (15) days after its passage.

Columbia Unified School District

Disclaimer

This report was issued by the Grand Jury with the exception of one member of the jury that identified a conflict of interest. This juror was excluded from all parts of the investigation, including interviews, deliberations, and the writing and acceptance of the report.

Summary

Columbia Union School District is a single school district located in Columbia; CA. Columbia Elementary School began in 1860 as a one-room schoolhouse, now located in historic Columbia State Park. Columbia Elementary School relocated in 1936 when a new school building was constructed on Parrotts Ferry Road. Over the years the campus has expanded to meet the needs of the growing district. In 2007, the district completed construction of 19 state-of-the-art classrooms and an Education, Sports and Performing Arts Complex. Today the District serves about 580 students in grades K-8. Columbia Elementary School was named a California Distinguished School in 2000 and a Title I Academic Achieving School in 2005, 2006, 2007 and 2009.

In the spring of 2010, a crime of a sexual nature was committed by an employee of the Columbia Union School District (CUSD) against a student that resulted in a conviction. The employee was the son of the District Superintendent, and had recently been hired as an After School Program (ASP) Assistant. Life at the school for the Board of Trustees and Administrative staff was turned upside down as the legal processes moved forward for over two years. Throughout it all, the faculty and staff at Columbia Elementary maintained a high standard of academics, and continued to carry out their educational duties with great results. As an entity, the school is and has continued to function as a stable education institution.

The Grand Jury's interest in the multitude of issues that arose centered on the lack of clarity of facts related to various perceived policy and procedure improprieties by the District Superintendent and the Board of Trustees. It is the Grand Jury's intent to provide factual information in the hopes that misinformation and perceptions can be clarified and closure for the District and community can occur.

This report is divided into topic areas to better focus and understand the many issues that the Grand Jury investigated. In summary:

The Grand Jury found no indication of preferential treatment in the hiring and orientation of the Superintendent's son. The method used to fill this position is standard procedure for these types of positions and has been used to fill other similar vacancies. The District had an informal unwritten policy that allowed a 90 day grace period for completion of a Proficiency Test. The

Jury found numerous examples of where this grace period had been used for new employees. However, a 90 day grace period is not compliant with the California Education Code.

In 2009, the Superintendent's son (herein referred to as 'the employee') was cleared during a criminal background check for intermittent employment at Belleview Elementary School (Belleview Elementary School District). The Grand Jury found no criminal history check in place for him at Columbia Elementary. Because Columbia and Belleview are two separate Districts, a criminal background check cannot be shared unless a formal Memorandum of Agreement (MOA) is in place. A formal MOA Fingerprint Clearinghouse was put in place April of 2011, thus Columbia was required to have a background check in place in for the ASP position in 2009.

It is the Grand Jury's conclusion that the actions of the Superintendent in requesting his son be hired at Belleview Elementary while inappropriate sexual allegations were being investigated at Columbia Elementary was a "conflict of interest". Columbia and Belleview Elementary Schools share the same Superintendent. The Superintendent's son was the subject of an ongoing investigation alleging inappropriate behavior of a sexual nature between the employee (an ASP teacher) and a student (a minor). The Belleview Board of Directors failed to seriously consider the appropriateness and potential liabilities for the school.

During the course of the investigation the Jury determined that the District was not in compliance with the 2011 custodian of records requirement (Penal Code Section 11102.2). It also found no violation of the Brown Act in relation to public comment procedures.

In August 2011 a review of relevant policies by the school Administration and the Superintendent's Council (made up of classified, certificated and administrative staff) was completed. The former policy for provision of CPR/First Aid training only at the beginning of a school year was revised in October of 2011, requiring completion of training within 15 days. The Grand Jury found no evidence of mistreatment of the victim by the school. On the contrary the victim received a great deal of personal support and assistance from several staff and faculty members.

The Grand Jury's investigation found that the process of conducting an Internal Investigation to determine the immediate employment status need for an employee is standard practice. Based upon the report and findings the Board of Trustees had to immediately decide if the employee should be retained, placed on administrative leave or dismissed, while the Tuolumne County Sheriff's Office (TCSO) investigation continued.

In October of 2012, a Board member resigned. The resignation came too late for the vacant seat to be included on the November 2012 General Election ballot. The vacancy was advertised and one individual applied. The Board decided to fill the vacancy through the appointment process which would save the district money and there would be no delay in filling the seat. The Grand Jury agrees that this was the most expedient and cost effective way to fill the vacant Board seat.

Columbia School's academic excellence, facilities, staff and students stand apart from this inquiry. Their achievements and dedication in providing an excellent educational experience and atmosphere were never in question.

Glossary

21st CCLC	21st Century Community Learning Centers
ASP	After School Program
BESD	Bellevue Elementary School District
Board	Columbia Unified School District Board of Trustees
Brown Act	Ralph M. Brown Act = Brown Act
CGJA	California Grand Jury Association
CUSD	Columbia Unified School District
DOJ	Department of Justice
The Employee	ASP Assistant that was investigated, charged and convicted
MOA	Memorandum of Agreement
TCSO	Tuolumne County Sheriff's Office
TCSOS	Tuolumne County Schools Office Superintendent

Background

In May of 2010 the TCSO began an investigation into allegations that an ASP Assistant at Columbia Elementary School had a sexual relationship with a 15 year old student. Initially, the investigation focused on sexually explicit texts and pictures exchanged between the two individuals on their cell phones. In February 2011, further information was provided to the TCSO that resulted in the recovery of evidence that supported charges of illegal sexual intercourse with a minor.

On June 10, 2011, the former ASP Assistant entered a guilty plea to two counts of unlawful sexual intercourse with a minor and one count of sending harmful matter to a minor. He was subsequently sentenced to 10 months in the County Jail and 5 years probation for felony sex with a minor. In addition the ASP Assistant was sentenced to 2 months in jail to be served consecutively and 3 years probation on a misdemeanor charge of sending harmful matter to a minor. As a condition of probation he was to register with local and state law enforcement agencies as a sex offender in accordance with Penal Code 290.

For almost two years, monthly CUSD Board meetings were contentious with community members expressing concerns and demanding answers related to the safety of students. A Tort Claim was filed against the District in October of 2011 on behalf of the victim. A tort claim is a legal claim made in response to being subjected to a wrongful act that did not involve a breach of contract. Torts can be classified into five categories: intentional torts, negligence, strict liability, product liability, and miscellaneous. When a person files a tort claim, he or she is filing a civil lawsuit against the person or other entity that committed the tort. Negotiations resulted in a settlement agreement on February 14, 2013.

The Grand Jury is charged with developing its own resources, information and facts. It may not rely on second hand knowledge or media reports. The Grand Jury wished to hear directly from the parties involved in the many controversies surrounding the crime that took place on the Columbia Elementary School campus. The Board and Superintendent were reluctant or unable to comment with media and there appeared to be a void in the information presented to the public. Given the nature of Grand Jury inquiries, it was our intent that these first person accounts would provide some clarity to the numerous issues and allegations arising from this controversy. Specifically, the Grand Jury focused on the following:

- Hiring Processes
 - Recruitment and Qualifications
 - Criminal History Check
 - Mandatory Training
 - Employing Relatives
- Internal Investigation
- Board of Trustees
 - Special Election
 - Brown Act
 - Communication and Information
- Focus Room
- Letters of Support
- Off the Salary Schedule Benefit

Approach

The scope of the Grand Jury's investigation was limited by a past court decision and guided by an Attorney General's Opinion. The court decision revolves around the Board of Trustees of Calaveras Unified School District vs. Leach (1968). The decision indicates that the Grand Jury is not entitled to the personnel records of school employees unless the Grand Jury is investigating willful misconduct or alleged criminal activity. The 1995 Attorney General's Opinion states, "The Grand Jury may investigate the manner in which a school district performs its duties and functions. A school district is a special – purpose district per PC 933.5, which allows for the investigation of the "method or system" (the procedures) by which a district's duties are carried out. However, a Grand Jury may not inquire as to the merit, wisdom or expediency (appropriateness) of substantive policy determinations within the discretion of the district. Therefore, it cannot look at such matters as the selection of school sites, the purchase and improvement of school property, district reorganization or annexations, curriculum, the selection or assignment of teachers and principals, or truancy policies. But it may investigate procedures such as how the district adopts its policies, and financial controls and record keeping."

Given these parameters, the Grand Jury focused on how policies and procedures were implemented, not who was hired. A criminal act occurred on Columbia's School campus. An

individual was criminally prosecuted, guilty pleas entered and sentence was passed. The committee became familiar with the facts and background information for its inquiry.

The Grand Jury began its inquiry by educating themselves about the interworking of the educational system. Appropriate Education Codes were compiled and read, interviews with educational authorities, personnel and agencies were conducted to facilitate understanding of how processes worked in the educational environment. Community members and Columbia School personnel cooperated with the committee, in developing an overall picture of events and provided background as to how those events happened and how the issues evolved.

The Grand Jury made every effort not to editorialize. Statements are based on factual information gathered and verified through the investigation. No one source of information took precedence. Multiple sources were utilized to triangulate and confirm facts or events.

Discussion

Recruitment and Qualifications for After School Program personnel:

The Columbia Elementary ASP is funded through the 21st Century Community Learning Centers (21st CCLC) initiative which is the only federal funding source dedicated exclusively to afterschool programs. The No Child Left Behind Act reauthorized 21st CCLC in 2002, transferring the administration of the grants from the U.S. Department of Education to State Education agencies. Each state receives funds based on its share of Title I funding for low-income students.

The ASP utilizes three job descriptions: ASP Director, ASP Assistant and ASP Aide. The Assistant and Aide positions have a high turn-over and are difficult to fill. These positions work 2-3 hours per day for \$10-11 per hour and have no benefits. Outreach and recruitment for these positions often results in few, if any applicants. As a result, many ASP positions are held by regular school staff who are adding extra hours to their regular 4-6 hour job. Frequently parents have filled these positions to keep the program functioning. This is not unique to Columbia Elementary School and occurs with many other schools in Tuolumne and Stanislaus Counties.

The following requirements from the California Education Code apply:

Education Code Section 54330 (a) states, “As used in this section, a paraprofessional means a person who assists classroom teachers and other certificated personnel in instructing reading, writing and mathematics. A paraprofessional includes an instructional aide as defined in subdivision (a) of Section 45343 and a teacher aide as described in Section 45360.”

Education Code Section 54330 (c) states, *"Pursuant to the federal No Child Left Behind Act of 2001 (P.L.107-110), a local education agency that receives funding from Title I of that act shall ensure that every paraprofessional hired on or after January 8, 2002, who is supported by those Title I funds and who assists in instruction has demonstrated at least one of the following in addition to any other requirements under that act:*

- (1) Completion of at least two years of study at an institution of higher education.*
- (2) Possession of an associate's degree or higher.*
- (3) Through a local or state assessment, that is appropriate to the responsibilities to be assigned to the paraprofessional, knowledge of, and ability to assist in, instructing reading, writing, and mathematics."*

Education Code Section 54330 (f) states, *" If the employing district is an elementary school the paraprofessional shall demonstrate proficiency in reading, writing and mathematics skills up to or exceeding that required for the high school seniors pursuant to subdivisions (a) and (f) of Section 51220 in the high school district that includes all or the largest portion of the elementary district. "*

Education Code Section Code 45361.5(a) states, *"No person shall be initially assigned to assist in the instruction of work as an aide for instructional purposes in kindergarten and grade 1-12, inclusive, unless the person has demonstrated proficiency in basic reading, writing and mathematics skills pursuant to Section 45330."* (Education Code Section Code 45361.5 (b) additionally states, *"As used in this section, "initially assigned" means any assignment, including substitute, temporary, probationary, or permanent employment, to assist in instruction as an aide for instructional purposes."*

It should be noted that the Columbia Elementary ASP Assistant position is a "paraprofessional" (also referred to as an Instructional Aide) as defined in the above Education Codes. Columbia's ASP Aide position is not a "paraprofessional". The Aide position is generally used with the lower grades to assist the ASP Assistant. The intermixing of job titles using the terms Aide, Assistant and Technician has been a large source of confusion.

The high turnover along with the limited hours, pay and lack of benefits has impacted the pool of qualified candidates for the Assistant position. Many applicants do not possess the AA degree or the paraprofessional certificate. The paraprofessional certificate is obtained by passing a proficiency test in reading, writing and mathematics. The exam is offered once a month at the Tuolumne County Office of Education and the Consortium that oversees the ASP through the Stanislaus County Office of Education. Since it is only offered once a month, there can be delay in a candidate's availability to be placed in the position.

According to the Consortium that oversees the ASP through the Stanislaus County Office of Education some districts have instituted a “grace period” that allows placement in the paraprofessional (ASP Assistant) position while fulfilling the proficiency requirement within a set number of days from employment or having attempted to pass the exam a certain number of times. Columbia Elementary implemented a 90 day “grace period.”

The Employee hired into the ASP Assistant position passed the proficiency test in mid to late January 2010, which was within the 90 day "grace" period. The 90 day policy was understood and informal. There is no written policy in the CUSD Policies, Regulations and Bylaws allowing for a time waiver for meeting the proficiency requirements of the Education Code. CUSD Policy, Regulations and Bylaws contain the same language as the Code of Education. This unwritten direction was in place before, during and after the Employee's hiring.

In early December 2009, three ASP personnel resigned effective at the beginning of Christmas Vacation. At that time there were no applications on file for these positions and they were offered to the regular school staff. An Aide's position was filled by a regular staff member, who had a Food Safe certificate (planned, prepared and delivered snacks daily to the ASP). One ASP Assistant position was filled by a regular school aide adding hours to their day. The second ASP Assistant's job was offered to the Superintendent's son, as he was volunteering and job shadowing in the Physical Education Department at that time. Since all three positions were filled through the internal process, no external advertisement or interviews were done.

The Employee spent two weeks, in December 2009, as an ASP Aide, shadowing the person he was intended to replace. Upon returning to school in January, he assumed the position of ASP Assistant in charge of the 6th, 7th, and 8th grade classroom and activities.

Criminal History Check:

Potential school employees, under Education Code Section 45125 and 45125.01 are subject to a criminal history check, through the Department of Justice (DOJ), before they are employed. Digital fingerprints are submitted to the DOJ. The vast majority go through the Tuolumne County Office of Education or the Sheriff's Department Community Service Unit in Jamestown. The employing agency receives the results, which are considered confidential. The employee obtained a clear criminal history check on March 25, 2009 for intermittent employment at the Bellevue Elementary School District (BESD) between March 2009 and June 2010. The Grand Jury found no criminal history check in place for the Employee at Columbia Elementary.

In 2008 the BESD established a contract with CUSD to share the services of the Superintendent position at a 75% (Columbia) to 25% (Bellevue) ratio. At the same time the Districts agreed to consolidate other services such as the Chief Business Officer and Human Resources. Columbia Elementary personnel oversaw these departments. Because the Human Resources function was

consolidated at Columbia it may have been assumed that criminal history information could be shared, when in fact that information needed to be compartmentalized and not flow between Districts. The criminal history could not have been shared; therefore the employee was subject to another criminal history check for the ASP position at Columbia Elementary.

California Education Code Sections 44830.2 and 45125.01 allows for sharing of criminal history information among school Districts. This is done through an MOA between the Districts.

Section Code 45125.01. (a) states, “If a person is an applicant for employment, or is employed on a part-time or substitute basis, in a position not requiring certification qualifications, or is a noncertificated candidate assuming a paid or volunteer position in accordance with Section 49024, in multiple school districts within a county or within contiguous counties, the school districts may agree among themselves to designate a single district, or a county superintendent may agree to act on behalf of participating districts within the county or contiguous counties, for the purposes of performing the following duties:

- (1) Sending fingerprints to the Department of Justice.*
- (2) Receiving reports of convictions of serious and violent felonies, criminal history records, and reports of subsequent arrests from the Department of Justice.*
- (3) Maintaining common lists of persons eligible for employment.*

In April of 2011, the CUSD Board and the BESD Board approved a Memorandum of Agreement regarding fingerprint clearinghouse data. No agreement for sharing of criminal history reports was in place at the time the employee began the ASP Assistant job at Columbia.

It should be noted that the employee’s background was known to be clear at the time he began the ASP job (verified during the criminal investigation). The Grand Jury does not believe that the lack of a criminal history check at Columbia was planned or deliberate, but rather a set of confusing and complicated circumstances that led to an administrative error. Had the background check been done by Columbia, it would have provided no information that would have influenced or prevented the criminal act that took place in the After School Program on the Columbia Elementary campus.

Through the investigation into the criminal history issue the Grand Jury found that Columbia is not in compliance with the 2011 custodian of records requirements. On January 1, 2011, Penal Code Section 11102.2 required that each recipient of criminal history information is required to designate a “custodian of records,” and forward fingerprints to “establish a criminal history background clearance” for the designee. It appears that this was accomplished in 2011; however the responsible staff member is no longer employed by the District. The legislation also requires Department of Justice be notified yearly of the name of the individual currently serving as the custodian of records. The DOJ has no record of a Custodian of Record for CUSD since 2012.

Mandatory Training:

All new personnel at Columbia Elementary are required to read and acknowledge school policies and practices and complete video or computer modules in the following: Drug and Alcohol Work Place, Tobacco Free Campus, Universal Precautions (blood borne pathogens, etc...), Child Abuse Reporting Procedures and Sexual Harassment While this is not an all-inclusive list, the Grand Jury investigation indicated that this has been standard procedure before and after the hiring of the employee.

In August of 2011, a review of relevant policies by the Administration and the Superintendent's Council (made up of classified, certificated and administrative staff) was completed. In addition to the policy review, the Administration also focused on the following items:

- “Appropriate interaction with students.”
- “Use of cell phones by staff and the appropriateness of providing cell number to students and parents.”
- “Use of social networking sites and other online venues by staff to communicate with students and parents.”
- “Common sense practices such as not being alone in a classroom with a student.”

At the beginning of the 2011 school year the entire staff (ASP included) were trained in the above mentioned areas. The CPR/First Aid training requirement was not met by the employee. According to a "Memorandum Regarding Criminal Incident on the Columbia Elementary School Campus sent to parents on September 6, 2011" it was stated that, *"The district offers Basic First aid or CPR training to all staff at the beginning of each school year. The employee (sic) was to receive this training at the beginning of the following school year. The Administration and Board are aware of this future requirement."*

In October of 2011, the Superintendent's Council after reviewing this procedure made the following recommendation which was adopted by the Board of Trustees:

"Any employee who begins employment after the annual training is provided, and who is required to obtain a CPR/First Aid card, will be given no more than 15 days to complete and pass CPR/First Aid. Since the district offers this training for all employees and pays those costs, the district is therefore required to provide this training to new employees at no cost. Options include Red Cross and on-line training."

Internal Investigation:

Late on the afternoon of May 10, 2010, the TCSO detectives responded to a complaint lodged by a parent, that an inappropriate relationship existed between the 7/8th grade ASP Assistant and a female student in the ASP. TCSO detectives briefly interviewed individuals and collected evidence. The TCSO detectives continued their investigation of these allegations. On May 11, 2010, two Columbia Elementary staff members initiated an internal investigation at the request of the Superintendent and the CUSD Board of Trustees. Ordinarily, the Superintendent would have led the investigation himself, but since his son was the focus of the investigation, he removed himself from further involvement. The report and findings were to be turned over to the President of the CUSD Board for their consideration.

The sole purpose of this early stage investigation was to provide information for the CUSD Board to determine the immediate status of the employee with the school. Based upon the report and findings the CUSD Board had to immediately decide if the employee should be retained, placed on administrative leave or dismissed, while the TCSO investigation continued. A regularly scheduled Board meeting was held the evening of May 11th, 2010. Late in the afternoon, prior to the meeting, the internal investigation report was submitted to the Board President and was presented to the CUSD Board, in closed session. The CUSD Board decision was to place the employee on administrative leave pending the outcome of the TCSO investigation.

The Board President immediately delivered the Board's decision to the Superintendent, who had earlier recused himself from the closed session. At that time the Superintendent presented the Board President with a written and signed resignation letter from the employee. The resignation was accepted by the Board making the Boards' previous decision to put the employee on administrative leave unnecessary.

The Grand Jury's investigation found that the process of conducting an Internal Investigation to determine the immediate employment status for an employee is standard practice. The employing agency needed details and information immediately in order to make an informed decision regarding the employee's employment status. The internal investigation began and ended on May 11th. The details collected served their purpose, and allowed the CUSD Board to determine the employee's employment status. The school provided all information to the proper law enforcement authority. The Internal Investigation was not intended to be a comprehensive assessment of the accusations or school policies and procedures.

Employment of Relatives:

During the Grand Jury investigation the word nepotism was used by some in reference to perceived preferential treatment in the hiring of the District Superintendent's son. The following

policy of the CUSD has been in place for many years and is consistent with state and local laws and regulation codes governing conflict of interests.

The CUSD Board Policies 4112.8 and 4212.8 state, “In order to preclude situations which could bring about a conflict of interest for members of the administrative staff, an employee shall not be appointed to a position where a member of his/her immediate family maintains supervisory or evaluation responsibilities for the position.”

“Immediate family members may be employed at the same department or work location with the approval of the Superintendent or designee.”

Nepotism is defined as: favoritism (as in appointment to a job) based on kinship¹. Workplace nepotism is not unusual, especially at smaller companies and non-profits in the private sector. There are no federal laws aimed at nepotism, although some states and cities have passed anti-nepotism laws to protect public sector workplaces. There is nothing in California law that prohibits family members from working together. Nepotism is not, in and of itself, illegal. However it can be risky, especially in a public sector organization such as the CUSD. In this situation, the Superintendent is at the top of the administrative leadership chain. All hiring recommendations and performance or disciplinary recommendations funnel through this position to the Board. The hiring of the Superintendent’s son is perceived by many as a conflict of interest (nepotism). It is not a legal issue, but rather an ethical debate. The nature of the Superintendents position and location in the organization hierarchy makes it highly visible and requires a very high standard for modeling ethical behaviors.

The interpretation of the CUSD Policy on employment of relatives has been a point of controversy. Many argue that the Superintendent was in the supervision chain of command. Others argue that all hiring and disciplinary actions are approved or ratified by the Board, and there are no relations to the Superintendent’s son on the CUSD Board, therefore no conflict of interest. The Grand Jury found no indication of preferential treatment in the hiring procedures or employee orientation procedures used for the Superintendents son. Interviews with other ASP staff, past and present, found no inconsistencies. It is quite routine to fill these part-time positions quickly and often with internal placements and there is no evidence that processes or procedures were deliberately changed or by-passed to hire the employee.

The hiring of the Superintendent’s son at Belleview Elementary School District immediately following the commencement of the TCSO investigation and the employee’s resignation at Columbia Elementary is troubling to the Grand Jury. The Columbia District Superintendent is also the Superintendent for the Belleview District which presents a conflict of interest. The employee worked in a temporary custodial position at Belleview Elementary from March of 2009 through December 2009. He remained on the temporary part-time employment list at Belleview. The TCSO investigation into alleged criminal activities of the employee began on May 11, 2010. The CUSD Board of Trustees determined on May 11th, that due to the serious nature of the allegations, the employee should be placed on administrative leave, pending the

results of the TCSO investigation. The employee submitted a letter of resignation on the same day which was accepted by the CUSD Board.

Employment records with the Tuolumne County Superintendent of Schools (TCSOS) document that the employee was employed at Bellevue Elementary for a part of May and June 2010. He was hired off of the temp/part-time employee list to help with demolition as part of a remodeling project on campus. Grand Jury interviews were consistent in that the Superintendent approached the Bellevue Board President with a request to re-employ his son. The Superintendent then spoke with the other Board members. Contents of those conversations are unknown, but it is understood by the jury that the status of his son was conveyed to the Board members. The BESD Board made the decision to hire the Superintendent's son after he was being investigated for crimes of a sexual nature on the CUSD campus.

The BESD Board President stated that the aforementioned issues were taken into consideration before the Superintendent's son was placed on the job. The BESD Board considered that there were only allegations of wrong doing, and that no formal criminal charges had been filed. BESD Board members acknowledged that there was an ongoing TCSO investigation with no completion date in sight; and there was a presumption of innocence until proven guilty. In addition, there were no children on the BESD campus during the demolition process.

The Superintendent did not recuse himself in the Bellevue Elementary hiring of his son. In not doing so, the Superintendent used his position and good standing with the BESD Board to place his son's interests before the best interests of the Bellevue District and students. The decision by both parties, the Superintendent and the Bellevue Board of Trustees, further inflamed public perception, that the Superintendent's son had received favorable treatment in both instances.

The Administrative leave process has a purpose, to provide time for a thorough investigation to take place related to serious allegations of criminal actions or misconduct. It removes the individual from the school environment until some resolution is reached. Further, it is a statement to the public that the District takes these situations seriously and desires to protect the District from further liability and maintain the safety of students.

Special Election:

In October of 2012, a CUSD Board member resigned. The resignation came too late for the vacant seat to be included on the November 2012 General Election ballot. The vacancy was advertised and one individual applied. During the course of the Grand Jury investigation several people questioned why the district did not decide to hold a Special Election for the vacant seat, (at a cost of \$2,000 - \$4,000 to the District). The Grand Jury learned that it is within the District's discretion to determine the best method of filling a vacant seat. The CUSD Board decided that in this instance there was only one candidate and the appointment process would

save the district money and there would be no delay in filling the seat, as would occur if a Special Election were to be held.

The Grand Jury agrees that this was the most expedient and cost effective way to fill the vacant Board seat. Holding a special election for one candidate would be a questionable expenditure of public funds.

Brown Act:

The CUSD Board operates under the requirements of the Ralph M. Brown Act (Brown Act). The 2012 California Grand Jury Association (CGJA) training manual states that the Brown Act “...requires the governing body of any local government to hold open and noticed meeting so that the public may observe the body’s deliberations and actions. It also requires the governing body to allow public participation in meetings.”

The California Government Code 54960 sets out specific criteria for:

- Informing the public of topic(s) to be considered.
- When and where meetings are to be held.
- How public comment is to be received.
- Communication within the board
- How votes are taken and announced to the public.

The Brown Act is the vehicle through which citizens can make their points of view known to decision makers. Those decisions usually impact the way people do business, conduct their lives and how public taxes or fees are being spent.

At a CUSD Board meeting on March 13th, 2012, many members of the public expressed that there was a deliberate attempt to prevent public comment related to the criminal incident that occurred on the CUSD campus in 2010. During this meeting the President of the Board announced that the Board was meeting as a “committee”, and the agenda reflected that fact. The Board President requested that the public limit their comments to only new information, requests or topics. Even with this request the CUSD Board heard several repeated comments and did not deny individuals the opportunity to speak. At subsequent Board meetings and up to the present, individuals have been allowed to comment on the topic and related issues without interference.

The Board was utilizing CUSD Board Bylaw 9323(b) which states, *"The Board need not allow the public to speak on any item that has already been considered by a committee composed exclusively of Board members at a public meeting where the public had the opportunity to address the committee on that item. However, if the Board determines that the item has been*

substantially changed since the committee heard it, the Board shall provide an opportunity for the public to speak. (Government Code 54954.3)."

Procedurally, the board had not previously met as a "committee" in a public meeting, while taking public comment on the issue at hand. The Board acted within the scope of the Brown Act, but all previous comments had been heard by the Board, and not as a sitting "committee." No previous agenda identified that the Board was convening as a "committee." By the next meeting, the Board abandoned this approach and continued to accept all public comments. The intent of the CUSD Board at the time was to reduce or eliminate repetitive comments.

Communication and Information:

There were two major factors that limited the CUSD Board from publicly addressing or responding to concerns raised by the public and local media. First, from May 10, 2010 through July 22, 2011, the TCSO was conducting an open investigation and the criminal proceedings that ended with the employee's sentencing. This occurred over a period of 14 months. Secondly, a Tort Claim against the District was filed on October 4, 2011, resulting in a settlement on February 14, 2013. This occurred over a period of 16 months.

During both periods of time noted above, the CUSD Board members did not publicly respond or provide explanation regarding the criminal actions that took place on the campus. Due to the Superintendent's conflict of interest, in that the accused was his son, the President of the Board became the spokesperson and liaison with the public and media for the CUSD. The President of the Board is constrained by the Brown Act, therefore he or she cannot act individually. The President has no legal right to make decisions related to the day to day operations of the school or make public comment representing the school without Board majority agreement. Normally the Superintendent would have been able to do this.

The Board had been advised by legal counsel not to publicly comment on the investigation and the subsequent criminal proceedings. There were legal obligations and liability concerns for the confidentiality and protection (privacy rights) of the victim as well as the former employee. Further, the CUSD Board could not interfere with the investigation and criminal proceedings that resulted.

With the culmination of the criminal proceedings on July 22, 2011, the CUSD Board began a three pronged effort to get information to the public, allow further public input and to assure the community that policies, procedures, and staff training had been reviewed and modified to ensure a safe school environment.

First, the CUSD Board held a special meeting to address the crime on August 25, 2011, which was heavily attended by the community and media. Members of the public in favor of or against

the CUSD Board's decisions were able to ask questions and air opinions on the crime that had occurred on the CUSD campus and District's handling of the incident.

Secondly, the CUSD Board approved a four page "Memorandum Regarding Criminal Incident on the Columbia Elementary School Campus" that was made available to parents and the community at large on September 6, 2011. The Memorandum provided further information regarding hiring and qualification issues, as well as policy reviews and additional training being provided to all staff.

Concurrently, the Superintendent's Council began a comprehensive review of policies and procedures. The Council presented the CUSD Board with "Policy / Procedure Review and Recommendation" in October of 2011.

The Council's "Summary" stated the following,

"The majority of the policies/procedures reviewed are standard California School Board Association (CSBA) Policies and appeared satisfactory. However, we found several items during the review that are process and procedure related and are proposing the Governing Board consider these recommendations."

1. CPR/First Aid training be passed within 15 days of employment.
2. Review job descriptions to ensure compatibility with actual job requirements.
3. Evaluation/Supervision review and implement further employee training."

In a three month period the CUSD Board had shared a substantial amount of information with the community, but the Board's ability to comment publicly, closed when the Tort Claim was filed in October of 2011 on behalf of the victim. The claim was not settled until February, 2013, 16 months later. The CUSD Board had to balance public questions and allegations with the possibility of exposing the District to further liability. "We cannot comment due to pending litigation" is a common practice both in the public and private sectors; but does delay the information and explanations which the public is entitled to, especially from a public entity.

Focus Room:

The investigation involving the victim and ASP Assistant began May 10, 2010. The victim was an 8th grade student who was at risk of not graduating. There was approximately one month left in the school year. Interviews with numerous faculty and staff consistently stated that there was sensitivity and concern for the victim's ability to graduate and her discomfort with the publicity generating around the investigation.

The Grand Jury received information expressing concerns related to the Focus Room where the victim was assigned to complete the remainder of the school year after the investigation began in

May 2010. Media reports and some members of the public referred to it as an "in-house detention" room. The Focus Room is a classroom located mid campus that is dedicated as the main office for the school counselor and a place where students can report for a variety of purposes.

- It serves as a place for counseling.
- A place for a student to take a time-out or pull-out either voluntarily or by teacher referral.
- A location for class suspensions or detentions.
- A place for students waiting for parents to pick them up.
- A place for doing homework or to receive assistance and tutoring.
- A place for a student to take a break on a bad day.
- A location that is safe and quiet.

The Focus Room may be used by any student and is often a refuge for special need students. Many students voluntarily come to the focus room. A student must ask their teacher for permission, and students are sometimes referred by a parent or teacher. The Focus Room concept is common in many schools and is well used at Columbia Elementary.

Statements given to the Grand Jury indicate that the victim utilized the Focus Room immediately following the beginning of the investigation voluntarily. It was later offered to her as a location for the remainder of the school year. At that time she expressed feeling uncomfortable among some of her fellow students and teachers. Several teachers and the counselor provided her with one-on-one tutoring during this period. Additionally, she occasionally assisted in the Kindergarten class next door to the Focus Room during that time. The victim passed her final year classes and graduated. She attended the graduation ceremonies.

Letters of Support:

On June 10, 2011 the defendant plead guilty and was sentenced on July 22, 2011. Following sentencing, the Probation Report was released for public review consistent with California Penal Code Section 1203.05 which states:

1203.05. "Any report of the probation officer filed with the court, including any report arising out of a previous arrest of the person who is the subject of the report, may be inspected or copied only as follows:

(a) By any person, from the date judgment is pronounced or probation granted or, in the case of a report arising out of a previous arrest, from the date the subsequent accusatory pleading is filed, to and including 60 days from the date judgment is pronounced or probation is granted, whichever is earlier.

(b) By any person, at any time, by order of the court, upon filing a petition therefore by the person.

(c) By the general public, if the court upon its own motion orders that a report or reports shall be open or that the contents of the report or reports shall be disclosed.

(d) By any person authorized or required by law to inspect or

receive copies of the report.

(e) By the district attorney of the county at any time.

(f) By the subject of the report at any time.”

Contained within the Probation Report were 8 letters written to the Superior Court Judge offering information for consideration in determining the sentencing of the employee. Five of the letters were written by school staff. In the pre-sentencing phase it is common for interested persons, including family members and others, to write letters concerning the defendant. These letters become a part of the Probation Report. (See Appendix A, California Rules of Court, Rule 4.411.5. Probation Officer's Presentence Investigation Report.)

Four of the five school staff were specifically asked to write the letters by the Superintendent, the defendant's father. All stated that the Superintendent prefaced the request by stating that he was asking as a father (not as the Superintendent). All reported that they were approached while on campus, either during or after school hours. All of the individuals who wrote letters believed that they would be kept confidential. The Superintendent also believed they would be confidential since he had been advised as such by the defendant's attorney. Four of the writers had little knowledge of the defendant, but had knowledge related to the victim's background and history. It was consistently stated to the Grand Jury that the defendant had committed a crime and should be punished. It was also stated that they did not believe that the defendant should be classified as a "sex predator".

A father has the right to solicit support for a family member in the pre-sentencing phase of a trial. Solicitation of employees of the District, while on campus during or after school hours, blurs the role of the father with that of the Superintendent. Although legal, it is an action that can "appear" to a reasonable person as unethical or a conflict of interest. The letters written by the five District personnel ended up being unnecessary since the sentence was set through a plea bargain process. The letters did become a part of a later Tort Claim filed on behalf of the victim against the District. There was no process in place that would have required these employees to obtain approval for engaging in an activity that could have negative impacts on the District either directly or indirectly.

Off the Salary Schedule Benefit:

Between September and December of 2012 the Columbia Board proposed and passed a \$2000 off the salary schedule benefit for all full-time staff and pro-rated benefits for part-time staff. This was negotiated with employee groups without benefit of complying with Assembly Bill 1200 (Chapter 1213, 1991 Statutes) Collective Bargaining Agreements. This requires the District to file a "Public Disclosure of Proposed Collective Bargaining Agreement" with the TCSOS ten days prior to Board action. The TCSOS office is required to review such expenditures to ensure that the District's budget can support the expenditure and remain within legal requirements.

At the November 13, 2012 CUSD Board meeting, the Superintendent advised the public that the Public Disclosure had been filed with the TCSOS office regarding the one time bonuses. The union negotiations had already been completed and agreed to, but the required public disclosure

was not filed with the TCSOS Office until November 29th, 2012. The Grand Jury was informed that the new Chief Business Officer at Columbia Elementary thought the document could be filed within 30 days of the CUSD Board's action.

Findings

- F-1** The use of a 90 day "grace" period for proficiency testing does not meet the California Education Code requirements.
- F-2** The criminal history check obtained for BESD in March of 2009 could not have been shared with the CUSD; therefore the employee was subject to another criminal history check for the ASP position at Columbia Elementary.
- F-3** Columbia is not in compliance with the 2011 custodian of records requirements, Penal Code Section 11102.2.
- F-4** The former policy for provision of CPR/First Aid training only at the beginning of a school year resulted in classroom personnel that did not have this important requirement in place while working with students. The policy was revised in October of 2011 requiring completion of training within 15 days.
- F-5** The Grand Jury found no indication of preferential treatment in the hiring procedures or employee orientation procedures used for the Superintendent's son. However, a perception that favoritism played a part in his being chosen for the job persists.
- F-6** It is the Grand Jury's conclusion that the actions of the Superintendent in requesting his son be re-hired at Belleview Elementary was a conflict of interest. This individual was the subject of an ongoing investigation alleging inappropriate activities between the employee (an ASP teacher) and a student (a minor). The Belleview Board of Directors failed to seriously consider the appropriateness and potential liabilities for the school. The nature of the allegations and environment of a school were not compatible.
- F-7** The internal investigation served its stated purpose. The scope and purpose of this investigation was poorly understood by the public which resulted in accusations of conflict of interest.
- F-8** It is within the District's discretion to determine the best method of filling a vacant seat on the Board of Trustees. The vacancy was advertised and there was one applicant. Filling through the appointment process was the most efficient and cost effective option.
- F-9** The Grand Jury finds no violation of the Brown Act related to accepting public comment.
- F-10** The Board had an approximate 3 month period in which it could respond to public questions and concerns. In that period the board shared a substantial amount of information with the community, but the board's ability to comment publicly closed when the Tort Claim was filed in October of 2011.

- F-11** The use of the Focus Room by the victim during the last month of the school year was not intended as a punishment. The victim was helped with her studies during this period and graduated.
- F-12** There is no process in place that requires employees to obtain approval for engaging in an activity that could have negative impacts on the District either directly or indirectly.
- F-13** Assembly Bill 1200 requirements were not met related to the approval process for the Off the Salary Schedule Benefit in 2012.

Recommendations

- R-1** The Grand Jury recommends that the CUSD should ensure that proficiency testing requirements are fully met consistent with the California Education Code.
- R-2** No recommendation. An MOA regarding shared criminal history checks between school Districts is now in place.
- R-3** The Grand Jury recommends that the CUSD should come into compliance with the 2011 custodian of records requirements.
- R-4** No Recommendation. The Grand Jury is pleased to see the improved First Air/CPR training policy in place.
- R-5** The Grand Jury recommends that the CUSD Board should scrutinize at all hiring of related employees, regardless of position, to ensure supervision lines are clear and no conflicts exist. The mere perception of a conflict of interest should be scrupulously avoided, especially by upper level leadership positions.
- R-6** The Grand Jury recommends that BESD and CUSD policy should be developed to ensure that ongoing criminal investigations or pending criminal charges be resolved before a job offer is made or an individual is allowed to return to work.
- R-7** No recommendation.
- R-8** No recommendation.
- R-9** No recommendation. However, the Grand Jury would like to suggest that during times of high stress (for all parties) appearing to change process and procedures unilaterally will usually result in confusion and increased tensions. The change by the CUSD Board to not go forward with the proposed changes for public comment at Board meetings was a good decision.
- R-10** No recommendation.

R-11 No Recommendation.

R-12 The Grand Jury recommends that the CUSD Board should establish policy and procedure requiring review and approval for employee participation in activities that have potential to negatively affect the District directly or indirectly. The Grand Jury further recommends that the CUSD Board consider establishing or assigning an Ethics Official or designee.

R-13 The Grand Jury recommends that the CUSD Superintendent should conduct appropriate checks and control measures to ensure compliance with local, state and federal laws, policies and regulations. The Grand Jury further recommends that new personnel should be mentored and trained in legal procedures. Checklists and quick reference materials or sources could be developed to assist.

Request for Responses

Pursuant to Penal code section 933.05, the Grand Jury requests responses as follows from the following individuals and governing bodies for all recommendations outlined above:

- Columbia Unified School District Board of Trustees
- Columbia Elementary School Superintendent

In addition, the Grand Jury requests a response on Recommendation 6 from the following governing body:

- Bellevue Elementary School District Board of Trustees

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda and open meeting requirements of the Brown Act.

Bibliography:

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Board of Trustees Calaveras Unified School District vs. Leach (1968) 258 Cal. App. 2nd 281.

California Grand Jury Association Training Manual 2012. Legal Topics, pg 12,15,33.

California Government Code Sections 54950-54963 (Brown Act).

California Education Code Sections 45330, 45125, 45125.01, 45342, 45343, 4534.5, 45344.5, 45361.5.

California Penal Code Section 1102.2 (COR) ns 1203.05.

California Attorney General's Office – Brown Act Open Meetings for Local Legislative Boards 2003, pg 33-43.

California Rules of Court 4.411.5, Judiciary Counsel of California.

Columbia Unified School District: Policies, Regulations and Bi-Laws.

Investigation of School District Policy. 78 Opinion California Attorney General 290 (1995).

September 6, 2011 “Memorandum Regarding Criminal Incident on the Columbia Elementary School Campus” presented to parents and the public.

Appendix A: 2013 California Rules of Court, Rule 4.411.5. Probation Officer's Presentence Investigation Report.



2013 California Rules of Court

Rule 4.411.5. Probation officer's presentence investigation report

(a) Contents

A probation officer's presentence investigation report in a felony case must include at least the following:

- (1) A face sheet showing at least:
 - (A) The defendant's name and other identifying data;
 - (B) The case number;
 - (C) The crime of which the defendant was convicted;
 - (D) The date of commission of the crime, the date of conviction, and any other dates relevant to sentencing;
 - (E) The defendant's custody status; and
 - (F) The terms of any agreement on which a plea of guilty was based.
- (2) The facts and circumstances of the crime and the defendant's arrest, including information concerning any co-defendants and the status or disposition of their cases. The source of all such information must be stated.
- (3) A summary of the defendant's record of prior criminal conduct, including convictions as an adult and sustained petitions in juvenile delinquency proceedings. Records of an arrest or charge not leading to a conviction or the sustaining of a petition may not be included unless supported by facts concerning the arrest or charge.
- (4) Any statement made by the defendant to the probation officer, or a summary thereof, including the defendant's account of the circumstances of the crime.
- (5) Information concerning the victim of the crime, including:
 - (A) The victim's statement or a summary thereof, if available;

- (B) The amount of the victim's loss, and whether or not it is covered by insurance; and
 - (C) Any information required by law.
- (6) Any relevant facts concerning the defendant's social history, including those categories enumerated in section 1203.10, organized under appropriate subheadings, including, whenever applicable, "Family," "Education," "Employment and income," "Military," "Medical/psychological," "Record of substance abuse or lack thereof," and any other relevant subheadings.
- (7) Collateral information, including written statements from:
- (A) Official sources such as defense and prosecuting attorneys, police (subsequent to any police reports used to summarize the crime), probation and parole officers who have had prior experience with the defendant, and correctional personnel who observed the defendant's behavior during any period of presentence incarceration; and
 - (B) Interested persons, including family members and others who have written letters concerning the defendant.
- (8) An evaluation of factors relating to disposition. This section must include:
- (A) A reasoned discussion of the defendant's suitability and eligibility for probation, and, if probation is recommended, a proposed plan including recommendation for the conditions of probation and any special need for supervision;
 - (B) If a prison sentence is recommended or is likely to be imposed, a reasoned discussion of aggravating and mitigating factors affecting the sentence length; and
 - (C) A discussion of the defendant's ability to make restitution, pay any fine or penalty that may be recommended, or satisfy any special conditions of probation that are proposed.

Discussions of factors affecting suitability for probation and affecting the sentence length must refer to any sentencing rule directly relevant to the facts of the case, but no rule may be cited without a reasoned discussion of its relevance and relative importance.

- (9) The probation officer's recommendation. When requested by the sentencing judge or by standing instructions to the probation department, the report must include recommendations concerning the length of any prison term that may be imposed, including the base term, the imposition of concurrent or consecutive sentences, and the imposition or striking of the additional terms for enhancements charged and found.

(10) Detailed information on presentence time spent by the defendant in custody, including the beginning and ending dates of the period or periods of custody; the existence of any other sentences imposed on the defendant during the period of custody; the amount of good behavior, work, or participation credit to which the defendant is entitled; and whether the sheriff or other officer holding custody, the prosecution, or the defense wishes that a hearing be held for the purposes of denying good behavior, work, or participation credit.

(11) A statement of mandatory and recommended restitution, restitution fines, other fines, and costs to be assessed against the defendant, including chargeable probation services and attorney fees under section 987.8 when appropriate, findings concerning the defendant's ability to pay, and a recommendation whether any restitution order should become a judgment under section 1203(j) if unpaid.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 1991, and July 1, 2003.)

(b) Format

The report must be on paper 8-1/2 by 11 inches in size and must follow the sequence set out in (a) to the extent possible.

(Subd (b) amended effective January 1, 2007; previously amended effective January 1, 1991.)

(c) Sources

The source of all information must be stated. Any person who has furnished information included in the report must be identified by name or official capacity unless a reason is given for not disclosing the person's identity.

(Subd (c) amended effective January 1, 2007; previously amended effective January 1, 1991.)

Rule 4.411.5 amended effective January 1, 2007; adopted as rule 419 effective July 1, 1981; previously amended and renumbered as rule 411.5 effective January 1, 1991; previously renumbered effective January 1, 2001; previously amended effective July 1, 2003.

Sierra Conservation Center

California Department of Corrections and Rehabilitation

Disclaimer

This report was issued by the Grand Jury with the exception of one member of the jury that identified a conflict of interest. This juror was excluded from all parts of the investigation, including interviews, deliberations, and the writing and acceptance of the report.

Summary

California Penal Code §919(b) mandates that the Grand Jury shall inquire into the conditions and management of the detention facilities in the county. Acting within this mandate, the 2012/13 Grand Jury visited the Sierra Conservation Center twice in 2012 to tour the facility, interview personnel and review vocational programs. The Grand Jury is concerned that an unintended consequence of the Public Safety Realignment Act (AB109) implementation is that low-risk inmates will instead be housed in either County detention facilities or placed on some form of probation and may no longer be available for firefighting assignments.

Glossary

AB109	Public Safety Realignment Act - Assembly Bill 109
CALFire	California Department of Forestry and Fire Protection
CDCR	California Department of Corrections and Rehabilitation
CFS Program	Conservation Fire Camp Program
Fire Camps	Conservation Fire Camp Program facilities
SCC	Sierra Conservation Center

Background

Sierra Conservation Center (SCC) is a 420 acre facility located at 5100 O'Byrnes Ferry Road, Jamestown, CA 95327. SCC is one of 33 adult prisons operated by the California Department of Corrections and Rehabilitation (CDCR) in the State of California. The institution, which opened in 1965, houses Levels I and II general population inmates and Level III sensitive needs inmates placed within administrative segregation. Inmates placed on the Level III tier cannot mix with general population inmates due to their crimes, notoriety or gang affiliations. Inmates receive full basic medical and dental care within the facility. Nutritional requirements follow guidelines set forth by the state.

The SCC manages 19 Conservation Fire Camp Program facilities (fire camps) located in throughout California. One camp, Baseline, is located in Tuolumne County. The SCC is one of

only two prisons in the state responsible for the training and placement of male inmates in the CFC Program. SCC works with the California Department of Forestry and Fire Protection (CALFire) and functions as the center for training staff and inmates in firefighting techniques. The camps are sited throughout the state in rural or wilderness areas for fire suppression (Appendix A). Inmates assigned to camps are dispatched to fight wild land fires and other emergencies when needed, in addition to a variety of community work projects.

Approach

The 2012/13 Grand Jury visited the SCC facility and was taken on an extensive tour. The jury was met by the Warden and all departmental managers for a question and answer session. All SCC staff were open and forthright in answering all of the Jury's questions, which were based on data available at the time. Grand Jury members visited the Baseline Fire Camp located in conjunction with the SCC facility. The Grand Jury reviewed copies of the most recent State and Federal audit inspection reports; the CDCR 2012 Annual Report; and the last five years of Tuolumne County Grand Jury Reports. A secondary tour was conducted to inspect the Level III Segregation Unit and Wastewater Treatment Plant. The Grand Jury investigated how AB109 could affect inmate availability for firefighting and other constructive activity at fire camps managed by the SCC.

Discussion

Conservation Fire Camp (CFC) Program:

The CFC Program was established by CDCR in 1915 to provide CALFire and other State agencies with an able-bodied, trained work force for fire suppression and other emergencies. CDCR and CALFire currently operate forty-two fire camps throughout the State. The SCC manages 19 of those camps. Fire camps are minimum security, consisting of about ten buildings, including military-style barracks, a dining hall, administration building, and work areas. Approximately 90 to 150 inmates are housed at each of the camps. Adult inmates assigned to the camps are carefully screened and medically cleared. Only minimum custody inmates may participate in the Conservation Fire Camp Program.

It has been a practice in California that State prison inmates, who qualify, may volunteer for firefighter training and community service in one of the fire camps. These camps are, for the most part, jointly operated by the CDCR and CALFire. Inmate firefighters are deployed for wild land firefighting and prevention as well as other wild land conservation work. These assignments to fire camps are year-round and may last a year or more. Over many decades of practice, it is accepted by both the general public and public safety leadership that inmate firefighters are essential to wild land fire prevention, fire suppression, fire control, and other important back country firefighting efforts.

To be eligible, inmates must be physically fit and have no history of violent crimes, as defined by the California Penal Code §4000-4030. As a cooperative effort, CDCR and CALFire are authorized to operate 200 fire crews year-round. In general, 14 to 17 inmates serve on a single

crew. Within the camp, inmates are in the custody of a CDCR officer. CDCR also provides facility security, custodial support, and medical service operations. Detention housing, food, and housekeeping services are provided by CDCR staff and non-firefighting inmates. CALFire personnel oversee the inmates while out of camp on firefighting operations and other work projects.

In the past, inmates eligible for fire camp service were serving State prison time for low-level crimes with at least two years remaining in their prison sentencing. Specific inmate classification guidelines for firefighting eligibility have been developed by the CDCR. For example, inmates convicted for arson crimes are not eligible to be firefighting volunteers. Selected firefighter inmates would be assigned by CDCR to any of the existing fire camps in any California County depending on CALFire needs.

AB109 Implementation Impacts:

California's Public Safety Realignment Act of 2011, commonly referred to as AB109, is perhaps the largest and most significant change to court-ordered incarceration of convicted felons within the last several decades. It was passed in response to a Federal District Court ruling that ordered the State to reduce overcrowding in its thirty-three prisons by 2013. The law took effect on October 1, 2011 and consists of many procedural elements with wide-ranging impacts to sentencing guidelines and handling. AB109 brought significant change to the sentencing, processing, and detention assignment for court-ordered incarceration of convicted felons. AB109 sentencing guidelines has caused a redistribution of inmates between State and County detention facilities, with higher-risk inmates becoming concentrated in State prisons while generally lower-risk inmates will be assigned to county detention or supervision by county Probation Departments.

As AB109 implementation is phased in, most potential firefighting-eligible inmates will no longer be assigned to CDCR custody within State prisons but instead be assigned to county detention facilities. These inmates are then the responsibility of the counties and housed within the general county jail population. The number of State prison inmates eligible for volunteer firefighter assignments is dropping significantly over time as AB109 is fully implemented. In October 2012, there were 1,673 State prison inmates assigned to fire camps as compared to 4,400 in 2011.

The 2012/2013 Grand Jury is concerned that an unintended consequence of AB109 is that State prisoner availability for fire camp service will continue to decrease as eligible detainees are instead assigned to county jails.

Findings

- F-1** Education classes offered at SCC are: Adult Basic Education I, II and III; Adult General Education Development (GED) and Physical Fitness testing.
- F-2** Vocational Training includes: Auto Mechanics, Auto Body and Fender, Carpentry, Masonry, Waste Water Treatment and Office Services.

- F-3** Religious and Self Help Programs are provided to inmates.
- F-4** As currently implemented, AB109 allows counties to either house low-risk inmates in their detention facilities or place them on probation.
- F-5** The number of State prison inmates eligible for volunteer firefighter assignments has dropped significantly over time as AB109 is fully implemented and low-risk eligible inmates are now serving their sentences within local facilities.
- F-6** There are clear and competing priorities for inmate classification and assignment to fire camps over the next several years that must be thoughtfully resolved.
- F-7** AB109 has only been in effect a year and a half, and implementation processes are still evolving. In addition, there are initiatives being considered to address several issues that are unclear or ill-defined relative to AB109 implementation.

Recommendations

- R-1** No Recommendation.
- R-2** No Recommendation.
- R-3** No Recommendation.
- R-4** No Recommendation.
- R-5** No Recommendation.
- R-6** The Grand Jury recommends that the SCC Warden and management staff maintain a continuing and close awareness of the many issues raised in ongoing AB109 implementation with respect to rural firefighting.
- R-7** The Grand Jury recommends that the SCC Warden and CDCR staff should develop an action plan necessary to monitor the AB109 implementation activities of public safety officials across impacted California counties relative to continuing inmate firefighter availability.

Request for Responses

Pursuant to Penal Code Section 933.05, the Grand Jury request responses as follows from the following individuals or governing bodies:

- R-6** Sierra Conservation Center.
- R-7** Sierra Conservation Center.

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Appendix A: Map of California Correctional and Rehabilitation Conservation Camps.

Map of California's Correctional and Rehabilitation Conservation Camps



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Tuolumne County Jail

Disclaimer

This report was issued by the Grand Jury with the exception of two members of the jury that identified a conflict of interest. These jurors were excluded from all parts of the investigation, including interviews, deliberations, and the writing and acceptance of the report.

Summary

The Grand Jury is required by California Penal Code section 919(b) to inspect jail and detention holding facilities within Tuolumne County. This Grand Jury investigation was not complaint driven. For almost two decades Tuolumne County Grand Juries have recommended that the existing Tuolumne County Jail (Jail) facility be replaced due to a multitude of shortcomings documented over the years. While a new facility is planned for the county, funding constraints have made the future construction uncertain. The Grand Jury has concluded that implementation of AB109 regulations has further emphasized overcrowding and safety conditions within the Jail facility. A recent visit by a California State Association of Counties representative summarized that the condition of the Jail facility was “the worst they had ever seen” at a local level.

Glossary

AB109	Public Safety Realignment Act - Assembly Bill 109, Chapter 15, Statutes of 2011
AOC	Administrative Office of the Courts
CMFG	California Medical Forensic Group
CSAC	California State Association of Counties
QA	Quality Assurance
SRMC	Sierra Regional Medical Center
County Administrator	Tuolumne County Administrator
BOS	Tuolumne County Board of Supervisors
Health Department	Tuolumne County Health Department
County Health Officer	Tuolumne County Health Officer
Jail	Tuolumne County Jail
Law and Justice Center	Tuolumne County Law and Justice Center
Probation Department	Tuolumne County Probation Department
Probation Officer	Tuolumne County Chief Probation Officer
Sheriff	Tuolumne County Sheriff
Sheriff’s Office	Tuolumne County Sheriff’s Office

Background

The Tuolumne County Jail (Jail) is operated and maintained by the Tuolumne County Sheriff's Office (Sheriff's Office). The Jail is responsible for detaining persons accused of crimes, transporting such persons to and from court appearances and housing convicted criminals. The Jail was built in 1959 and is a three story concrete structure located in historic downtown Sonora. Two separate additions have been added to the existing structure over the years, however the building is dilapidated and at maximum capacity on a fairly regular if not daily basis. The Jail facility was only designed to accommodate housing inmates for periods of up to eighteen (18) months. The implementation of the Public Safety Realignment Act (AB109) now makes incarceration up to several years with no time cap limit.

In an effort to address overcrowding in California's prisons, AB109 was signed by the Governor on April 4, 2011. As a result of AB109, on October 1, 2011 criminal justice realignment went into law. AB109 shifts the responsibility for incarcerating many classified "non-violent, non-serious, non-sex" offenders to serve their time in county jails instead of state prisons. Under AB109, offenders are classified only by *the present committed offense*, meaning that it is possible that a person with a history of violent, serious, or sex offenses – or even a lengthy criminal history – may technically qualify as a "non-non-non" offender.

The Jail facility is currently operating at capacity and offers no room for expansion or renovation to accommodate new populations. While a new jail is part of an existing plan for the new Tuolumne County Law and Justice Center (Law and Justice Center), funding and timelines have not been secured. In the meantime, the current jail is significantly impacted by housing the AB109 realignment population. Therefore, all planning for local incarceration must use the existing jail infrastructure.

Approach

The 2012/13 Grand Jury visited the Jail facility and was taken on an extensive tour. The Grand Jury interviewed Jail and Sheriff's Office staff to become familiar with the management, operations and conditions within the facility. The Grand Jury chose to focus their investigation on general facility conditions, medical services, inmate recreation, safety of Jail staff, AB 109 impacts and programs, and the Law and Justice Center funding efforts. Jurors additionally toured the Tuolumne County Core Day Reporting Center to monitor the management and alternatives to incarceration programs being implemented under AB109 regulations.

The Grand Jury reviewed copies of the most recent State and Federal inspection reports; the 2012 Tuolumne County Health Department Jail Inspection report; the previous ten (10) years of Tuolumne County Grand Jury reports and the 2010 – 2012 Biennial State of California Corrections Standards Authority Report. Follow-up interviews were conducted with the Tuolumne County Sheriff (Sheriff), the Tuolumne County Chief Probation Officer (Probation

Officer), the County Health Officer and the Tuolumne County Administrator (County Administrator).

Discussion

On September 10, 2012, Grand Jury members met with the interim Tuolumne County Jail Commander in addition to several support staff, followed by a tour of the Jail facility. The tour included the garage enclosure, intake and booking area, inmate visiting booths, communication and dispatch center, general population housing, medical housing, women's barracks, video conferencing and rehabilitative services room, laundry facility, the kitchen (food preparation and distribution areas) and the rooftop recreation area. All areas visited by Jury members appeared to be clean with the exception of the garage enclosure that looked to have been used as storage for approximately one quarter of the room.

Jail Facility Conditions:

Two additions were completed in 1986 and 1993, however the facility is landlocked and built out at its' maximum capacity. The jail is in an extremely poor condition and that has been magnified by overcrowding and staff shortages. The inadequate, linear design of the jail makes it difficult to cost-effectively allow staff to provide constant, direct supervision of inmates. The Grand Jury noted that some staff administrative offices were operating out of converted closets and every inch of space is being utilized to the best of staff ability. There simply is no further room in the current location.

The Jail facility is certified to hold 140 inmates. On the day of the tour there were 131 inmates in custody, however during a typical day the inmate count is usually between 136 and 138. Of the total in custody, 18 detainees were classified under AB109 and confined to Jail custody either through state prison sentence transfers or Tuolumne County Probation Department (Probation Department) monitoring violations, also known as "flash holds". Flash holds occur when any offender found to be in violation of the conditions of their probation is subject to re-arrest and incarceration by the Probation Department and Sheriff's Office deputies. According to the 2011 Tuolumne County Jail Needs Assessment Update, there is a current need for 208 beds and a projected 2018 need for 240 beds. The jump from 208 to 240 needed beds over the next few years is in large part due to the AB109 mandates. When the current maximum capacity is reached, the interim Jail Commander and sergeants must internally decide whom to keep and whom to release. AB109 classified and felony offenders serving longer sentences are mandatorily retained, while persons charged with misdemeanor or low risk felony offenses are released and referred to the Probation Department.

There are times when inmates should be separated in accordance with inmate classifications (e.g. disciplinary isolation, behavioral health needs, protective custody, gang affiliations, etc...). This classification system becomes increasingly important as inmates convicted of more serious crimes are detained in the current facility for longer periods of time. The United States Supreme Court has asserted that legislation "...does not mandate that jails are comfortable....but that prison or jail staff have an obligation to protect inmates from violence at the hands of other

prisoners.” The current jail does not provide adequate space to accomplish such housing exposing the County to future liability resulting from inmate on inmate assaults.

The effective operation of a jail and rehabilitation of inmates requires the availability of dedicated program spaces such as education, counseling, rehabilitative services, medical treatment and recreation. The Grand Jury observed that the one small room being used to offer Narcotics Anonymous and Alcoholics Anonymous courses once a week can only accommodate six participants at each session. In addition, the room is also being used for videoconference court appearances and psychiatric services. With the jail operating at maximum capacity, Narcotics and Alcoholics Anonymous program space is inadequate and becoming less accessible to inmates wishing to participate in those services. Limits on space continue to restrict inmate access to educational programs. The current program space is unable to best serve the inmate population and unable to meet the needs of additional inmates.

Currently, the inmates have a mandatory recreational period of three hours per week. One of the underlying goals of correctional recreation is that inmates will acquire new leisure skills to successfully re-enter society. Recreation activities include a rehabilitative effect for some inmates and recent research has shown they may also increase the effectiveness of other treatments (substance abuse counseling) when teamed with those programs. The rooftop recreation area is accessed by traversing a two story stairwell that is unmonitored by video surveillance, creating a safety issue for staff and inmates. The rooftop recreation area is an enclosed open air space that has high walls, a wire mesh enclosure at top with a few metal benches and an exercise apparatus bar against the wall. The recreation area can accommodate twenty (20) inmates at a time and is monitored by one video surveillance camera.

The Grand Jury noted that a set of “community” nail clippers were safely secured to the recreation wall for inmates to use. A bottle of disinfectant was available for use with the nail clippers; however according to Jail medical staff, 75% of inmates are Hepatitis C positive. Jail staff informed the Grand Jury that the basketball hoop was removed due to injuries and abuse in the past. The jail roof had recently undergone repairs to correct leaking problems, and in doing so, there was a period of two (2) weeks in which the rooftop recreation area was unavailable for inmates to utilize. The Grand Jury is greatly concerned that the lack of outdoor recreation is creating pent-up inmate energy that often presents tense situations that can endanger the safety of staff and detainees.

Staffing:

According to the Tuolumne County 2012/13 Budget the Jail facility is staffed by forty-three (43) personnel positions (Appendix A). At the time of the tour, thirty-seven (37) of those positions were filled, with the Jail Commander position being vacant for a period of two (2) years. An interim Jail Commander was performing the operating and management functions of the jail and patrol units. On November 13, 2012, the Tuolumne County Board of Supervisors (BOS)

approved the hiring of the Jail Commander position. At the time of the Grand Jury's tour, the interim Jail Commander was currently working with one (1) Sergeant and five (5) on site staff to oversee jail operations. Employees work ten (10) hours shifts four (4) days a week. These staffing levels are the bare minimum as required by Federal regulations. Staffing shortages require that employees work long hours of overtime with little vacation or personal time with their families.

The realignment of AB109 classified inmates into the local system for extended sentences has increased the number of violent incidents within the facility. Inmates that were previously incarcerated in the State prison system are accustomed to a higher quality of living standards than they are provided at the local level, resulting in increased violent offenses against Jail staff and other inmates in an effort to be transferred back to a State managed facility. Sheriff Office and County Jail staff expressed that the atmosphere of the jail has changed from a short-term incarceration facility into that of an overcrowded miniature prison, further exacerbating the old and inadequate jail facility. Jail staff are now exposed to a harder criminal element that poses risks to their safety in performing their job duties. Jail medical staff expressed that the elevated classification of AB109 offenders at the facility has caused staff to request a deputy present while administering treatment as a precautionary safety measure.

The impact of this environment on the overall health and safety of correctional officers and Jail staff creates an obvious issue for employees. The Sheriff and interim Jail Commander have reduced overtime hours in the last year from an average of 300 – 350 hours during a two week period to 150 – 175 hours, however staff still continues to be stretched alarmingly thin. The Sheriff is expanding AB109 training to employees and is in the process of increasing safety education for staff. Despite the operational limitations imposed upon the Sheriff's Office and Jail staff, employees continue to provide effective and efficient law enforcement to the best of their ability. The Sheriff's Office remains committed to fulfilling its statutory role to assure that public safety is not compromised.

Medical Services:

Since 1999, the Tuolumne County Health Department (Health Department) has held a contract with California Forensic Medical Group (CFMG), for the provision of health care and medical services to inmates of the Jail facility. The current CFMG jail contract covers two (2) years from July 1, 2011 to June 30, 2013. The 2011 contract was budgeted for \$798,800, and has now increased 2.6% to \$820,000. Jail medical services are funded through the Health Department Health Fund via several state and federal financing sources.

The Health Department oversees the CFMG contract for inmate medical services within the Jail. Medical services are administered by one contracted Medical Physician (MD), one Psychiatrist, one Program Manager / Registered Nurse (RN) and one Licensed Vocational Nurse (LVN). The RN and LVN work in eight (8) hour shifts from 7:00 am to 3:00 pm and from 3:00 pm to 11:00 pm, covering a sixteen (16) hour period throughout a seven day work week. The Grand Jury noted that often the RN will come in at 6:30 am to prepare for their shift. The MD works at the

Jail facility one day a week on Thursday for four (4) hours and is on call 24 hours a day, seven days a week. Psychiatric services are provided by an out of county psychiatrist via videoconferencing sessions one day a week for two (2) to four (4) hours (Appendix B).

Upon intake, inmates or transferees are given an intake health screening performed by trained correctional staff that includes visual observations and inquiry regarding current illnesses, medications, communicable diseases, psychiatric history and alcohol or drug impairment or abuse. Although dental services are not part of the current contract and are paid for through separate Health Department state and federal funding sources, inmate dental services are administered by the Sonora Regional Medical Center (SRMC) Dental Clinic. Dental screenings are performed during the intake health evaluation. If needed, referrals are then given to the appropriate health care staff for follow-up and treatment. If medical conditions exist that are beyond the capability of on-site health services staff or no medical personnel is present to administer treatment for immediate medical issues, the inmate is escorted and monitored by a Jail Deputy to the Sierra Regional Medical Center Emergency Room for evaluation and treatment. The MD and County Health Officer are notified when an inmate has been transferred and admitted to SRMC.

The Jail medical staff and County Health Officer conduct and participate in quarterly Quality Assurance (QA) meetings to assess medical services provided and improve work processes and efficiencies. Jail medical staff and the Health Department are actively involved in performance improvement functions, including reviewing data and recommending and implementing processes to address inmate safety, including processes to respond to inmate safety alerts and reduce patient safety risks. Quarterly QA meetings allow for all involved agencies to openly communicate and resolve or brainstorm any relevant issues pertaining to inmate medical and dental care in accordance with the current CFMG contract and State and Federal regulations. The Jail Dental Clinic Director from the SRMC Dental Clinic is invited and participates when dental issues are being discussed. A Tuolumne County Behavioral Health Department representative works with medical staff and discharged inmates on “alternative ideas and services” for released inmates seeking mental health care. The Grand Jury learned that the Emergency Department Director from SRMC has been invited to all Jail QA meetings, however has only attended two meetings out of eight since August 2011. The importance of teamwork across several different agencies cannot be emphasized enough.

During incarceration, detainees are continued on essential regulatory medications for diabetic, heart or blood pressure conditions. Inmates that are required to have prescriptions for regulatory medications are evaluated by medical staff and the prescriptions are verified through the providing pharmacy. Medical staff refers essential medication prescriptions to the MD that prescribes all regulatory medications to inmates. Norco is the only narcotic prescribed to inmates and is used in rare occasions of major medical procedures or detoxification for two to

three day periods. Under the supervision of the MD, the RN and LVN will administer Motrin or Tylenol for pain relief; however methadone and other narcotic analgesics are not administered to inmates. When an inmate is released, he or she is given a thirty day prescription for regulatory medication to be filled at the pharmacy of their choosing. If an inmate is discharged during the middle of the night, they must wait until the pharmacy opens to have their prescription filled.

In the past medical staff were on-site until 3:00 am to administer evaluation and treatment for confined individuals. In 2011, jail medical staffing hours were reduced by four hours. Medical personnel are on-site until 11:00 pm, leaving a period between 11:00 pm and 7:00 am with no medical staff on hand. The Grand Jury was initially concerned that a high number of booking rates may occur during this time in the absence of medical staff coverage. Detainees needing immediate medical attention would therefore be transferred to SRMC for treatment, creating an increase in cost to the County. After reviewing monthly jail booking statistics for the Jail facility, it was found that on average only 20% of bookings occur during the eight hour period that medical staff is not on-site (Appendix C). According to Quality Assurance data compiled by the County Health Officer, the average number of inmate referrals to the SMRC Emergency Department for 2012 was 1.8 per month.

In 2011, the Health Department conducted a survey of similar surrounding counties, most of which also contracted for services with the CFMG, and noted that Tuolumne County was contracted for 117 weekly nursing hours per 100 inmates compared with an average of 59 weekly nursing hours per 100 inmates for matched counties (Appendix D). Tuolumne County continues to maintain the highest nursing hours per week compared to surrounding counties, as the reduction in medical staff hours still provided for 93 weekly nursing hours per 100 inmates. The survey has been further refined to take into account the recent shift of AB109 realignment inmates at the county level, making the calculation base of nursing hours per 100 inmates closer to an average of 140. The new census provides for a nursing coverage ratio of 80 weekly nursing hours per 100 inmates, and remains higher than that of matched counties even before AB109 took effect.

While inmate safety and health remains well protected without excessive emergency room costs to the County, the medical costs of treating long term inmates is steadily rising. The CFMG contract provides \$15,000 for inpatient and ER care per inmate in accordance with the limits dictated by Penal Code 4011.10. The county is responsible for any costs above the \$15,000 cap limit. For the last three years, the costs to the county over and above CFMG contributions are as follows:

- 2010/11: \$13,283
- 2011/12: \$1,853
- 2012/13: \$15,695 (at the time of this writing)

Medical costs to the county for inmate care have increased 747% from the previous year, with a sharp rise in high-risk pregnancy care expenditures within the housed female population. Currently, the new Low Income Health Program is developing a process by which coverage for inpatient care during incarceration in county jails will fall under the Medi-Cal system; however implementation of such a program is undetermined at the time of this writing. The increase in long-term incarcerated individuals at the local level poses a serious risk to the county in terms of possible future litigation concerning allegations of inadequate medical care for jail inmates. County Administration and County Health Department officials have regularly explored the cost of excessive catastrophic liability insurance, but have opted out in the past for a number of reasons such as cost, stability of inmate population and implications to public health programs. County Administration and County Health Department officials are again considering obtaining a quote for such liability insurance.

Funding for a New Jail:

The Tuolumne County Board of Supervisors (BOS), County Administrator and the Sheriff's Office have been actively involved in pursuing the funding and construction of a new Tuolumne County Law and Justice Center (Law and Justice Center) for the past twelve (12) years. The original concept of replacing the existing Jail facility with a Sheriff's Administration Complex was brought to light in March of 2001 by the County Administrator and the Sheriff's Office. Since then, numerous technical studies and past Grand Jury reports have resulted in the scope of the Law and Justice Center increasing dramatically from the original intention of replacing the jail.

Current plans for the future Law and Justice Center includes:

- A new jail and sheriff's offices, replacing the nearly 54-year-old outdated and overcrowded TCJ facility. Funding has not been secured.
- A juvenile detention center which would allow the county to stop sending young offenders to centers in the Central Valley, which is costly and keeps them from their families and local support programs. Partial funding has been secured through a Corrections Standards Authority grant.
- A new courthouse and court administrative offices, which the state would fund because it has taken over court functions from the counties. Funding has not been secured.
- Offices for the district attorney, public defender and probation departments. Funding has not been secured.
- A new county headquarters for the California Highway Patrol. The state has set aside the funding for the project, which would replace leased space in Jamestown.

Members of this Grand Jury join all previous Tuolumne County Grand Juror's in condemning the existing Jail facility, and yet acknowledge the failure of State decision makers to adequately fund a new facility. Based on recommendations contained in numerous technical studies and

past Grand Jury Reports, on November 6, 2007, the Board of Supervisors (BOS) approved a conditioned land purchase agreement for a 48 acre site located off of Wards Ferry Road and State Highway 108 for a future Law and Justice Center at a cost of \$4.2 million dollars. Initial planning and design assessment reports in 2007 estimated the cost to be \$253 million dollars, mainly dependant on state funding sources that never materialized or were subject to budget cuts in subsequent years. The project has brought about highly publicized community concern regarding scope, cost and lack of funding mechanisms in the midst of the influx in AB109 realignment populations at the local level in an already inadequate jail facility.

In response, the BOS and County Administration staff have twice downscaled the initial size and scope of the Law and Justice Center design. In March of 2008, total facility square footage requirements were decreased to 93,334 sq. ft and project construction cost was revised to \$85 million dollars. In December of 2011 the County Administration staff, architect and jail planning team further reduced the project size to 77,991 sq. ft and a onetime construction cost of \$48.3 million dollars. Each change to the scope of work has cost the county \$40,000 in state consultant and architectural fees, making the total cost of change in project scope \$80,000.

Grand Jurors worked with the County Administrator and Administrative staff to become familiar with past and current efforts being pursued to secure funding for the Law and Justice Center. Jury members were initially concerned that state grant funding sources were being turned down by the Board of Supervisors under advice from County Administrative staff. The Grand Jury found that in March of 2008 the BOS authorized Administrative staff to submit a grant application for AB900 Phase I grant funding for construction of the new Law and Justice Center, in which the county was awarded \$13 million dollars in September of that year. The grant funding was awarded with the stipulation that the Law and Justice Center would be “shovel ready” for construction within a two year time frame and that all planning, architectural and environmental review was to be completed by 2011. The BOS and Administrative staff declined the first phase of AB900 grant funding citing an insufficient award amount and local matching funds to accomplish the tasks within the time frame specified by grant requirements. If grant money was issued during the first Phase of AB900 funding and not used, grant funding criteria would have made Tuolumne County ineligible for future AB900 funding phases. The Grand Jury found that the Board of Supervisors decision to reject the AB900 Phase 1 funding to be merited by remaining eligible for future funding.

In March of 2009 the BOS and Administrative staff submitted a grant application under SB81, and was awarded \$16 million through the Corrections Standards Authority towards construction of the new Juvenile Detention Facility. In November of 2009 after County Planning Commission review and BOS certification of the Law and Justice Center Environmental Impact Report, the County finalized actions necessary to complete the acquisition of the purchased 48 acre site. On April 19, 2011 the Board approved a Memorandum of Understanding with the

Administrative Office of the Courts (AOC) outlining the details for the sale of 4.33 acres of property on the Law and Justice Center campus for state construction of a new Courthouse. The AOC is responsible for funding all of the courthouse construction costs under SB 1407, however architectural design of this phase of the project has been delayed until fiscal year 2014/15, unless construction funds are restored in the coming year's state budget. On June 7, 2011 the Board of Supervisors approved a construction contract for infrastructure improvements (e.g. road, water, sewer, cable, etc...) to serve all future uses on the Law and Justice Center campus. The improvements are now complete. In July of 2011, the BOS reviewed a financial plan and authorized Administrative staff to proceed in advancing the Juvenile Detention Facility. In October 2011, the BOS authorized Administrative staff to submit a grant application for phase II of AB900 funding. In 2012, the state did not award the county funding based on grant criteria that prioritized applicants with higher numbers of jail populations. This type of grant funding criteria makes it difficult for small counties to be competitive for grants, especially in this time of declining state and federal funding.

The County Administrator and staff are continuing to pursue some remaining, unused funds from AB900 grant programs awarded for other surrounding county jail projects. They are currently researching a new program under SB1022 that could allow for grant funds of up to \$20 million dollars for local jail projects; however a higher percentage of state funding is needed as this leaves a \$28.3 million dollar shortfall that would have to be funded locally. The Administrative staff has considered major funding options such as borrowing from existing General Fund revenues, seeking voter approval of General Obligation Bonds with debt service funded by a special property tax assessment or borrowing on liens taken out on county buildings and property. These options may yet be considered in the future.

Findings

- F-1** The Tuolumne County Jail facility is outdated, dilapidated and overcrowded. The Jail Facility was not designated to house longer-term inmates as being mandated by AB109 legislation.
- F-2** Inmate population at the jail has increased to maximum capacity due to AB109 transfers and "flash holds" at the local level.
- F-3** Misdemeanor offenders are often released with referral to the Probation Department to make room for AB109 inmates and higher level felony offenders.
- F-4** The Jail facility is inefficiently laid out resulting in unsafe conditions for staff and inmates.
- F-5** The Jail facility lacks adequate space for housing inmates according to classification systems.

- F-6** The Jail facility lacks adequate rehabilitative program space to best serve the inmate population. The one room used to provide these services is being primarily used for court or medical videoconferencing making it difficult to provide Narcotics and Alcoholics Anonymous support for what is the vast majority of inmates.
- F-7** The County Jail facility lacks adequate outdoor recreational facilities and space to accommodate the inmate population serving longer sentences.
- F-8** Jail staff is exposed to a harder criminal element within the facility due to AB109 implementation which poses risks to their safety in performing their job duties.
- F-9** Jail medical staff maintains a positive attitude in carrying out their job responsibilities while working in inadequate space and crowded conditions.
- F-10** Inmates are properly and sufficiently medically assessed and medicated per state and local protocols and procedures upon intake.
- F-11** The County Health Officer and Jail medical staff participates in Quality Assessment meetings to address medical issues and discuss medical care within the County Jail facility. The Sonora Regional Medical Center Emergency Room Director has attended these meetings on an annual basis.
- F-12** The increase in long-term incarcerated individuals at the local level poses a serious risk to the county in terms of possible future litigation concerning allegations of inadequate long term medical care for jail inmates.
- F-13** The scope of the planned Law and Justice Center has twice been reduced to balance cost saving measures while maintaining adequate space needs of each phase.
- F-14** The County Board of Supervisors and County Administrative staff members were acting within the best interest of the County in declining the awarded \$13 million dollars of Phase I AB900 grant funding. The State of California has failed to adequately fund the new construction of the Law and Justice Center complex.
- F-15** The Board of Supervisors and Administrative staff are actively seeking new grants and funding opportunities to fund the Law and Justice Center.

Recommendations

- R-1** The Grand Jury recommends that the jail facility be replaced as soon as funding is secured for the currently planned Law and Justice Center.
- R-2** No recommendation.
- R-3** No recommendation.

- R-4** The Grand Jury finds that replacement of the current Jail facility will remedy the finding. No specific recommendation is warranted.
- R-5** The Grand Jury finds that replacement of the current Jail facility will remedy the finding. No specific recommendation is warranted.
- R-6** The Grand Jury recommends that the County Sheriff and the Jail Program Director find a balanced approach to providing rehabilitative inmate services to ensure that Narcotics Anonymous and Alcoholics Anonymous programs are accessible to those inmates that choose to participate in them.
- R-7** The Grand Jury finds that replacement of the current Jail facility will remedy the finding. However, the Grand Jury recommends that the basketball hoop and recreation equipment be supplied to inmates during outdoor recreational periods.
- R-8** The Grand Jury recommends that the Sheriff's Office continue with safety training for all personnel to ensure that staff is well educated and prepared to deal with increasingly violent detainees serving longer sentences in conjunction with AB109 mandates.
- R-9** No recommendation.
- R-10** No recommendation.
- R-11** The Grand Jury recommends that the County Health Officer, Jail medical staff and the Sonora Regional Medical Center Emergency Room Director continue to attend all QA meetings scheduled in the future. The Grand Jury acknowledges that the Sonora Regional Medical Center facility is a private organization that is not operated by the County, but does receive County funds for inmate emergency room care.
- R-12** The Grand Jury recommends that the County Health Director and County Administrator continue to pursue available state funding for the health care and rehabilitative services of transferred AB109 inmates. The Grand Jury further recommends that they secure long term catastrophic liability insurance to protect the County from possible future litigation resulting from inmate medical suits.
- R-13** The Grand Jury recommends that as state or local funding becomes available, that the construction of the new jail, the Sheriff's Office and Probation Department expansion phases remain the top priority to the Board of Supervisors and County Administrator. The County Administrative staff and analytical team should be commended for their efforts to reduce the scope and cost of the originally planned Law and Justice Center.
- R-14** No recommendation.
- R-15** The Grand Jury recommends that state or local funding for jail replacement continues to be aggressively pursued by County Administrative staff.

Request for Responses

- R-1** Tuolumne County Board of Supervisors
Tuolumne County Administrator
Tuolumne County Sheriff
- R-6** Tuolumne County Sheriff
Tuolumne County Jail Program Director
- R-7** Tuolumne County Sheriff
Tuolumne County Jail Commander
- R-8** Tuolumne County Sheriff
- R-11** Tuolumne County Health Officer
Sonora Regional Medical Center Vice President of Nursing
Sonora Regional Medical Center Emergency Department Director
- R-12** Tuolumne County Board of Supervisors
Tuolumne County Administrator
Tuolumne County Health Officer
- R-13** Tuolumne County Board of Supervisors
Tuolumne County Administrator
Tuolumne County Sheriff
Tuolumne County Chief Probation Officer
- R-15** Tuolumne County Board of Supervisors
Tuolumne County Administrator

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Appendix A: Tuolumne County 2012/13 Budget – Allocated Positions By Department.

Appendix B: Tuolumne County Jail Contract Staffing Pattern.

Appendix C: Tuolumne County Jail Bookings by Month per Hour.

Appendix D: Tuolumne County Health Department 2011 Small County Jail Medical Services Comparison Study.

Appendix A – Tuolumne County 2012/13 Budget – Allocated Positions By Department

8/24/2012

COUNTY OF TUOLUMNE ALLOCATED POSITIONS BY DEPARTMENT

	2007-08	2008-09	2009-10	2010-11	2011-12	Rec.* 2012-13	Final** 2012-13	Net Change
General Budgets								
Board of Supervisors	7.00	7.00	6.80	6.00	6.00	6.00	6.00	0.00
County Administrative Office	6.00	5.00	5.00	5.00	5.00	5.00	5.00	0.00
Auditor/Controller	13.00	13.00	13.00	13.00	13.00	13.00	13.00	0.00
Treasurer/Tax Collector	5.50	4.50	4.50	4.00	4.00	4.00	4.00	0.00
Assessor/Recorder	17.00	17.00	17.00	14.00	14.00	14.00	14.00	0.00
Archives	1.00	1.00	1.00	1.00	1.00	1.00	1.00	0.00
Office of Revenue Recovery	8.00	7.00	8.00	7.50	6.50	6.50	6.50	0.00
County Counsel	7.00	7.00	5.00	5.00	4.80	4.00	5.00	1.00
Human Resources	6.80	6.80	4.80	3.80	3.80	3.80	3.80	0.00
Elections	3.00	3.00	2.00	2.00	1.00	1.00	1.00	0.00
Facilities Management	29.00	27.00	27.00	24.00	17.00	16.00	17.00	1.00
Firm Commissioner	1.00	1.00	1.00	0.00	0.00	0.00	0.00	0.00
Information Technology	25.00	25.00	22.00	20.00	15.00	15.00	15.00	0.00
Surveyor	4.00	3.00	2.00	2.00	2.00	2.00	2.00	0.00
Jamestown Mine	1.00	1.00	1.00	1.00	0.50	0.00	0.00	0.00
Total General	134.30	128.30	120.10	108.30	93.60	91.30	93.30	2.00
Public Protection								
District Attorney	17.00	17.00	16.00	16.00	15.00	14.00	15.00	1.00
D.A. Spousal Abuse Prosecute	1.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
D.A. Victim Witness	3.00	3.00	3.00	3.00	3.00	2.50	3.00	0.50
D.A. Vehicle Prosecution	1.00	1.00	1.00	1.00	1.00	1.00	1.00	0.00
D.A. Violence Against Women Grant	1.00	1.00	1.00	0.00	0.00	0.00	0.00	0.00
Child Support Services	25.81	23.80	24.50	0.00	0.00	0.00	0.00	0.00
Public Defender	7.00	7.00	7.00	6.80	6.30	6.30	6.30	0.00
Sheriff/Coroner	69.00	68.00	68.00	64.50	60.00	58.00	60.00	2.00
Sheriff - Court Security	10.00	10.00	6.00	6.00	6.00	6.00	6.00	0.00
Sheriff - Communications	12.00	12.00	13.00	13.00	13.00	13.00	13.00	0.00
Sheriff - Tuolumne Narcotics Team	6.00	4.00	4.00	5.00	5.00	4.00	4.00	0.00
Sheriff - Jail	45.00	45.00	42.00	41.00	41.00	41.00	43.00	2.00
Probation	35.00	33.00	31.00	30.00	30.00	34.00	37.00	3.00
County Fire	8.00	8.00	7.00	4.50	4.80	3.00	3.00	0.00
Agriculture Comm/Wts & Mess	6.00	6.00	5.00	5.00	4.00	4.00	4.00	0.00
Community Development Dept	29.75	28.75	22.75	20.80	23.63	22.50	23.50	1.00
Code Compliance	2.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Animal Control	9.00	10.00	9.00	9.00	8.75	8.00	8.75	0.75
Total Public Protection	287.56	277.55	258.25	226.60	221.48	215.30	227.55	12.25
Public Ways and Facilities								
PW - Road Admin/Engineering	0.00	0.00	0.00	0.00	0.00	11.80	12.00	0.20
PW - Administration	6.00	6.00	6.00	5.50	4.00	0.00	0.00	0.00
PW - Eng. Svcs - Development	6.00	6.00	5.00	4.00	3.00	0.00	0.00	0.00
PW - Eng. Svcs - Projects	8.00	8.00	5.00	5.80	5.80	0.00	0.00	0.00
PW - Traffic & Engineering	2.00	2.00	2.00	0.00	0.00	0.00	0.00	0.00
Public Works - Road Maintenance	38.00	38.00	38.00	38.00	30.00	30.00	30.00	0.00
PW - Special District Admin	1.00	1.00	1.00	1.00	1.00	1.00	1.00	0.00
Total Public Ways and Facilities	61.00	61.00	57.00	54.30	43.80	42.80	43.00	0.20
Health and Sanitation								
Air Pollution Control	2.00	2.00	2.00	2.00	2.00	2.00	2.00	0.00
Health	24.40	23.40	20.60	20.20	15.20	16.20	16.20	0.00
Women, Infants & Children (WIC)	0.00	0.00	0.00	0.00	4.90	5.00	5.00	0.00
Tobacco Control	1.88	1.80	1.80	1.80	1.80	1.80	1.80	0.00
Environmental Health	14.50	10.63	8.63	6.60	0.00	0.00	0.00	0.00
Behavioral Health	6.00	68.50	50.00	49.50	48.80	51.60	52.60	1.00
Total Health and Sanitation	48.78	106.33	83.03	80.10	72.70	76.60	77.60	1.00
Public Assistance								
Social Services	105.00	105.00	104.00	101.00	98.50	107.00	107.00	0.00
Veterans	2.00	2.00	2.00	2.00	2.00	2.00	2.00	0.00
Total Public Assistance	107.00	107.00	106.00	103.00	100.50	109.00	109.00	0.00
Education								
Library	12.00	12.00	11.00	9.75	8.25	8.25	8.25	0.00
Farm Advisor	2.50	2.50	2.00	2.00	0.00	0.00	0.00	0.00
Total Education	14.50	14.50	13.00	11.75	8.25	8.25	8.25	0.00
Recreation								
Boat Patrol	3.00	3.00	3.00	3.00	3.00	3.00	3.00	0.00
Recreation	5.75	5.75	3.60	1.60	1.60	2.40	2.40	0.00
Standard Park	1.00	1.00	2.00	2.00	2.00	2.00	2.00	0.00
Youth Centers	3.00	3.00	3.00	3.00	2.40	2.40	2.40	0.00
County Museum	0.75	0.75	0.00	0.00	0.00	0.00	0.00	0.00
Total Recreation & Cultural	13.50	13.50	11.60	9.60	9.00	9.80	9.80	0.00
Enterprises & Internal Service Funds								
Airports	3.80	4.00	4.00	3.00	3.50	3.50	3.50	0.00
Public Transportation	5.00	5.00	5.00	0.00	0.00	0.00	0.00	0.00
Tuolumne General Hospital	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Tuolumne General Medical Facility	67.00	37.40	37.40	34.70	0.00	0.00	0.00	0.00
Home Health - VNA	27.90	23.80	0.00	0.00	0.00	0.00	0.00	0.00
Adult Day Health Care	5.50	6.00	0.00	0.00	0.00	0.00	0.00	0.00
Hospice	9.70	6.80	0.00	0.00	0.00	0.00	0.00	0.00
Outpatient Rehab	2.80	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Purchasing	2.00	2.00	2.00	2.00	2.00	2.00	2.00	0.00
Fleet Services	0.00	0.00	0.00	0.00	6.00	7.00	7.00	0.00
Radio Communications	0.00	0.00	0.00	0.00	1.00	1.00	1.00	0.00
Solid Waste	3.50	4.00	5.00	4.00	4.00	3.00	3.00	0.00
Ambulance	0.00	0.00	0.00	0.00	2.00	2.00	2.00	0.00
Total Enterprise & Internal	127.20	89.00	53.40	43.70	18.50	18.50	18.50	0.00
Grand Total	793.84	797.18	702.38	636.35	567.83	571.55	587.00	15.45

*FY 2012-13 Recommended Budget numbers reflect position allocations after mid-year changes take effect on September 30, 2012

** FY2012-13 reflects changes through June 30, 2013

**Appendix B - Tuolumne County Jail
Contract Staffing Pattern.**

TUOLUMNE COUNTY STAFFING PATTERN									
POSITION	S	M	T	W	Th	F	Sat	HRS	FTE
Program Manager/RN		7 to 3	7 to 3	7 to 3	7 to 3	7 to 3		40	1.0
LVN/RN	7 to 3						7 to 3	16	0.4
LVN/RN	3 to 11	3 to 11	3 to 11	3 to 11	3 to 11	3 to 11	3 to 11	56	1.4
Nursing Relief/OT								2 to 4	0.05-0.1
Medical Director/Physician	Two to four hours per week							2 to 4	0.05-0.1
Medical On-Call	24 hours per day, 7 days per week								
Psychiatrist	Two hours biweekly, may be accomplished with telepsychiatry							2 to 4	.025-.05
Days	7 to 3								
Evenings	3 to 11								

Appendix C - Tuolumne County Jail Bookings by Month per Hour

Jail Bookings by Month per Hour

Month: January 13'																																Totals	
Hour	T	W	TH	F	S	SU	M	T	W	TH	F	S	SU	M	T	W	TH	F	S	SU	M	T	W	TH	F	S	SU	M	T	W	TH		
01hrs	1						1					1			1			2	1		1				1	2							11
0100hrs	6			1	1	1													1	1	1								1		1		13
0200hrs	2	2								1					2	2		2	1	2		1					2			2		4	23
0300hrs	1							1		1	3															1			2				9
0400hrs	1							4			1															1							7
0500hrs																	1													1			2
0600hrs																	1																1
0700hrs		1															1																2
0800hrs		2	1	3			3		2	1	2			2	4	1		1	1			5	1		3	1		3		1			37
0900hrs	1		2								2		1								1	3	3	3	2				1	1	1		21
1000hrs								1	2					1			1					1						1					7
1100hrs		2			5			4		1					1		3	6	3			1	2					1					29
1200hrs	2					3	1	3	5	1	5										3		1	1									25
1300hrs	1	1				5	1		1	2	1										1	1					1			3			18
1400hrs	2	2		2	1		3				1		1	2								2				2		3					21
1500hrs		2		1			2			1	4						1	2		1	1							1	1	3	1	1	22
1600hrs		4	1				5	2		1	2			3		1							1		6			1					27
1700hrs			1	1				2	2						1								2		1								10
1800hrs		5								2				3	1	1															5		18
1900hrs			1	2		1						1	1	1														1	3		1		12
2000hrs	1					1			1		1	1			2					1		1		1		1	1						12
2100hrs		1			1																				1	1	3						7
2200hrs		1		3	1	1	2				1				1						1	1	1	1	1			1		1	1		18
2300hrs		1	1								1			1	1		1	7	1			4		1		1		3					23
TOTALS	13	21	7	18	9	12	18	17	11	10	15	11	15	10	13	10	10	20	20	10	22	13	13	10	11	16	12	17	11	11	11	11	110
DAILY POP	131																																
M= 55 T= 77 W= 67 TH= 42 F= 74 S= 34 SU= 26																																	
Average Daily Pop: 																																	
During CFMG hours 286 After CFMG hours 89																																	
Monthly percentage 76.27%																																	
23.73%																																	

Jail Bookings by Month per Hour

Month: February 13'																												Totals		
Hour	F	S	SU	M	T	W	TH	F	S	SU	M	T	W	TH	F	S	SU	M	T	W	TH	F	S	SU	M	T	W		Th	
01hrs			1	2	2			1			1				2			2	1			1	1			25	1			15
02hrs		1						1	1	1										2							1			8
03hrs						1			1																					3
04hrs			3															2						2						8
05hrs																					1			1	2					4
06hrs											1																			1
07hrs						1											3						1			1				6
08hrs	3	1		1	3	4		1			1	2	2	2		3			1	3	2	1			2	5	2			39
09hrs					1		2				4	1		1								1				2	5	2		11
10hrs				1	2								1		2	1	1	2		1					1	1	2			15
11hrs											1	1										1			2	3	2			10
12hrs				3	1	5						6	1	2					2								2			22
13hrs									1	1					5	2				2			1			1	1			14
14hrs		2	3			1					3	2	2			1	1				2	1			3	1	7	1		30
15hrs				5		1			1	1	4		2				2					1			1		1	1		21
16hrs	1			1	3			2		1				2					1	2	4			1						19
17hrs	2		1		2	1		6				3				2					2	1		3	2	1				26
18hrs	1						1			1					1						2		1							7
19hrs					1						1			1		1														4
20hrs			1			1		1	1						2															6
21hrs									1		2			1								2					4			10
22hrs					5		1	1	2	1				2								9	1	3	1					26
23hrs				1	1		2	1	3		3				1			1		1					1		4			19
DAILY POP																														
M= 55 T= 55 W= 62 TH= 35 F= 49 S= 35 SU= 33																														
Average Daily Pop: 																														
During CFMG hours 266 After CFMG hours 58 Monthly percentage 82.10% 17.90%																														

Jail Bookings by Month per Hour

Month: March 13'																															Totals		
Hour	F	S	SU	M	T	W	TH	F	S	SU	M	T	W	TH	F	S	SU	M	T	W	TH	F	S	SU	M	T	W	TH	F	S	SU		
01hrs																1						1	2		2							1	7
0100hrs					1				1	1		4					3					1		1								2	14
0200hrs			1													2	1							2							1		7
0300hrs										1			4				2									1							8
0400hrs												1	1					1										1					4
0500hrs																2		1						1									4
0600hrs																						1						2					3
0700hrs	1						3						1													1	5						11
0800hrs				1	1	1		1			1	1	1	2	1						5	5	1	2				3	1				27
0900hrs	1			1	1	2								2	2			1	2	2						2	1	3			2		22
1000hrs	1					1	1					2	1				1			2				1									10
1100hrs					6			3										1	2	1								2	1	2			18
1200hrs	1	1								1	1						1		1		4												10
1300hrs														1						2	1	1			1	1	1						8
1400hrs	2			1	3		1			1		5	1	2				3	4	1	1	1	1		2	3		5		2	1		40
1500hrs			1	2		1		1		1	1			4				3					1										15
1600hrs	2	2				3		4			3		4	2						2	1	1				2			4				30
1700hrs					1	1							2					2						2			5		1				14
1800hrs					2							1								1		3							2	2			11
1900hrs						2					1		3			1	1		2		1	1	1	4	1		1	1			2		22
2000hrs	1				1	1		1	1		3		2							1	1				1							1	14
2100hrs		1		6	2					1		2						2							1			1	1	1			18
2200hrs	1													1	2							1	2	1									8
2300hrs								2		1	2							2		6						1			1	1			16
DAILY POP																																	

M= 46 T= 66 W= 62 TH= 54 F= 47 S= 34 SU= 32

Average Daily Pop: 

During CPMG hours 278
After CPMG hours 63

Monthly percentage 81.52%
18.48%

Appendix D - Tuolumne County Health Department 2011 Small County Jail Medical Services Comparison Study

Small Counties Comparison							
County	Population	Inmate Average Daily Population	Total Daily Nursing Coverage	# Hours per 100 inmates	Total Costs	Contractor	Jail Medical Costs per Inmate per Year
Nevada	98,680	210 adults 25 juveniles	24 hours/7 days	71	\$1,523,244 FY 09/10 + CPI increases annually + 2%, or 5% total, whichever is less	CFMG	\$6,481
Mendocino	90,289	255 adults 27 juveniles	24 hours/7 days	60	\$1,710, 945 adopted budget FY 10-11 (medical and dental)	CFMG	\$6063 (includes dental)
Yuba	72,900	approximately 240 adults	24 hours/weekdays ≈18 hours/weekends (depends on staffing)	65	Sheriff's Dept. pays for PH staff to operate jail medical. How much? Budget doesn't reflect...	County-run	
Lake	64,053	220 adults	24 hours/7 days plus 40 hrs/wk Nurse Practitioner	94	\$1,251,396 adopted budget FY 10-11	CFMG	\$5,688
Tehama	63,100	181 adults	9 hours/7 days adult	35 (in addition to services provided by Tehama County Health Center)	\$793,043 adopted budget FY 10-11 (medical and dental)	County-run	\$4381 (medical and Dental)
San Benito	58,388	100 adults 40 juveniles	8 hours/7 days adult 4 hours/weekdays juvenile	54	\$795,400 FY 08/09 + CPI increases annually	CFMG	\$5,678
Siskiyou	46,010	90 adults	9 hours/weekdays only	50	\$592,340 Health fund (+ \$116,870 General fund?) from adopted budget FY 10-11 (medical and dental)	County-run	\$7,869
Calaveras	45,870	70 adults	4-5 hours/weekdays only	36	\$380,345 FY 10/11 + CPI increases annually	CFMG	\$5,433
Amador	38,022	≈70 adults in 2011 ≈90 adults in 2010	5-8 hours weekdays only	57	\$533,211 FY 10/11 + CPI increases annually	CFMG	\$7,617
Lassen	35,889	90 adults in county jail + 140 adults in jail for CDC inmates.	None. MD or hospital for county and CDC inmates	N/A	\$566,014 adopted budget FY 10-11 (includes jail physician/hospital care only, no nursing coverage)	County-run	NA
Del Norte	29,673					County-run	NA
Glenn	29,434	120 adults	8 hours/7 days	47	\$793,848 FY 09/10 + 4.75% annually	CFMG	\$6,615
				59.33333333			
				Average			
Tuolumne		120 adults		93	\$798,800		\$6,656

<i>Jail Inmate Medical Services-CFMG Contracted Counties Daily Coverage Hours and Contract Costs 2011</i>							
County	Contractor	Nurse Staffing Daily Hours	MD Staffing Weekly Hours	Medical On- Call Hours	Inmate Average Daily Population	Per Diem Charge (based on quarterly average coverage)	Total Yearly Contract Costs
<i>Amador</i>	CFMG	5-8 hrs Mon-Fri	2-4 hours	24/7	around 70 adults in 2011 around 90 adults in 2010	\$3.02 for over 90 inmates	\$533,211 FY 10/11 + CPI increases annually
<i>Calaveras</i>	CFMG	4-5 hrs Mon-Fri	4 hours	24/7	70 adults	\$2.92 for over 90 inmates	\$380,345 FY 10/11 + CPI increases annually
<i>Glenn</i>	CFMG	8 hrs 7 days per week	2-4 hrs	24/7	120 adults	\$4.08 for over 120 inmates	\$793,848 FY 09/10 + 4.75% annually
<i>Lake</i>	CFMG	24/7 (including 40 hr/wk RN Case Mgr & 32 hour mental health RN)	Medical: 4 hours (+ 40 hours Nurse Practitioner) Psych: 4 hours (telepsychiatry) Dentist: 4 hours	24/7	220		\$1,251,396 FY 10/11
<i>Merced</i>	CFMG				750 adults 100 juveniles	\$3.75 for over 750 adult inmates \$1.71 for over 20 juvenile detainees	\$4,541,317 FY 08/09 + CPI increases annually
<i>Nevada</i>	CFMG	24/7 (including 40 hr/wk RN Case Mgr)	Medical: 5 hours Psych: 5 hours	24/7	210 adults 25 juveniles	\$4.25 for over 235 adult inmates and juvenile detainees combined	\$1,523,244 FY 09/10 + CPI increases annually + 2%, or 5% total, whichever is less
<i>San Benito</i>	CFMG	8 daily adult 4 Mon-Fri juvenile	Medical: 4 hours Dentist: 3-4 hours	24/7	100 adults	\$3.34 for over 140 adult inmates and juvenile detainees combined	\$795,400 FY 08/09 + CPI increases annually
<i>Stanislaus</i>	Correct Care Solutions	24/7 multiple RNs & LVNs	Medical: 40 hours Psych: 10 hours Dentist: 16 hours	24/7	1,500 adults and juveniles in 4 facilities	\$3.19 + 3%/yr for over 1,500 adult inmates and juvenile detainees combined	\$7,139,000 FY 09/10 + 5% annually

Jail Inmate Medical Services-Small Counties Not Under Contract With CFMG 2010

County	Total Population	Service Provider	Inmate Population	Daily Service Hours	Payment for Hospitalizations?	Cap on Costs?	Budget for Services
Lassen	35,757	Private MD or PA (pd \$5,400/mo) does med calls for about 1/2 hour per day. Inmates are often sent to the hospital as there are no medical beds/nursing care available at the jail. Medco is for prescriptions, lock box kept on site, officers distribute meds.	90 County jail + 140 jail for State inmates. Private MD sees both County and State inmate patients routine issues only.	MD on call 24/7	No contract with hospital, but penal code states that hospital cannot exceed the Medi-Cal rate for services.	No, constantly negotiates with the hospital	Very open ended, usually over \$1 million/year.
Siskiyou	45,971	Health Dept. -Health Officer visits several times per week, 2 nurses stationed at jail daily weekdays	104 capacity + 3 medical beds (ADP = 90)	8am-5pm M-F (9 hours), may add weekend coverage soon	Contracts with local hospital	No, but pay reduced rate	\$658,000, but believe will be lower b/c switched pharmacies to CPS. Saving \$10-15K/mo w/ them.
Sutter	95,878	Health Dept. has medical unit stationed at the jail.	233 capacity + 2 medical beds	4am-12am (20 hours)			
Tehama	62,419	2 County Nurses-hired through SO (non-PH) stationed at the jail, 7 days/week, 8am-5pm; overlapping one day. County MD comes 2/weekly.	181	Nurses: 7 days, 8am-5pm. MD comes every M & TH.	Contracts with local hospital	No. Pays .20 on the dollar for outpatient, (Medi-Cal rate) and .33 on the dollar for inpatient	\$785,688, including everything (dental, pharmacy, hospital, supplies, etc). Usually apprx. \$100,000 under budget each FY
Yuba	73,067	Health Dept. has medical unit stationed at the jail. Medical Director there full-time, always at least 1 nurse.	400	M-F, 24 hr. Weekends 6am-1am.			

Public Safety Realignment

Act AB109

Disclaimer

This report was issued by the Grand Jury with the exception of one member of the jury that identified a conflict of interest. This juror was excluded from all parts of the investigation, including interviews, deliberations, and the making and acceptance of the report.

Summary

In an effort to address overcrowding in California's prisons, the United States Supreme Court ordered the State of California to reduce its prison population by more than 30,000 inmates over a three year period of time. As a result, on October 1, 2011 The Public Safety Realignment Act (AB109) was signed into law by the California Governor. AB109 and a companion bill AB 117 (collectively referred to herein as AB109) shift the responsibility for incarcerating many classified "non-violent, non-serious, non-sex" offenders (referred to as non-non-non offenders) to serve their time in county jails instead of state prisons. The Tuolumne County Probation Department (Probation Department) and Tuolumne County Sheriff's Department (Sheriff's Department) have taken on the supervision of offenders placed on Post-Release Community Supervision (PRCS).

Tuolumne County has received initial funding to cover the cost of supervising these felons; however the state has not allocated adequate funding to fully implement this new program or taken into consideration Probation Department and Sheriff Department staffing limitations, jail facility conditions and capacity maximums.

Glossary

AB109	Public Safety Realignment Act - Assembly Bill 109, Chapter 15, Statutes of 2011
ADC	Alternatives to Detention Center
CCP	Community Corrections Partnership
EMP	Electronic Monitoring Program
MRT	Moral Reconation Therapy
PRCS	Post Release Community Supervision
Realignment Plan	Tuolumne County 2011 Public Safety Realignment Plan
DA	Tuolumne County District Attorney
Jail	Tuolumne County Jail
PRCS	Post Release Community Supervision
Probation Department	Tuolumne County Probation Department
Chief Probation Officer	Tuolumne County Chief Probation Officer
Sheriff	Tuolumne County Sheriff
Sheriff's Department	Tuolumne County Sheriff's Department
VLF	Vehicle License Fees

Background

The Grand Jury sought to better understand AB109 and whether Tuolumne County was adequately prepared for its implementation. Under AB109 regulation each county was directed to create a Community Corrections Partnership (CCP) to develop and implement a Public Safety Realignment Plan (Realignment Plan) and be responsible for allocating state funds to the various county and city agencies. The Tuolumne County CCP was formed in 2011 and is made up of representatives from the Sheriff's Department, the Tuolumne County District Attorney's Office, Victim Witness Office, Office of Education, Behavioral Health Department, Public Defender, Human Services Agency, County Administrator's Office, Superior Court, Probation Department, Bar Association, Sonoma Police Department and Mother Lode Job Training. CCP members meet on a quarterly basis to structure a phased response to AB109 as well as meet the immediate need of providing direction and services intended in the legislation.

Acting under AB109 mandate, the CCP developed a multi phase first and second year plan dependant on the establishment of core services that would provide alternatives to incarceration while providing accountability and effective interventions for sentenced offenders. The 2011 County Realignment Plan was adopted by the Tuolumne County Board of Supervisors on August 7, 2012 (Appendix A). The primary objectives of the Realignment Plan include developing proven evidenced based alternatives that work verses incarceration for offenders, protecting community safety and allocating funds to provide the most beneficial services to offenders.

Approach

The 2012/13 Grand Jury visited the Tuolumne County Alternatives to Detention (ADC) Center to monitor the management and programs being implemented under AB109 regulations. Juror's made an additional unannounced visit to the ADC Center to become familiar with the Electronic Monitoring Program (EMP) that monitors PRCS participants. Interviews were conducted with the Sheriff's Department, Probation Department and BI Incorporated staff to gain a greater understanding of programs, procedures and the complexities of multi-agency AB109 implementation and Realignment Plan progress.

All agencies consulted were forthright and open in accommodating Grand Jury requests. The Grand Jury found that the Probation Department and the Sheriff's Department are diligently working to implement changes at the jail and through probationary monitoring mandated by AB109. Staff across agencies reported flexibility and a willingness to adjust as the AB109 population reenters the community. During discussions with the Sheriff's Department and Probation Department staff, each department manager shared information about their particular divisional services, programs, staffing, strengths and weaknesses.

Discussion

Funding:

In 2009, the Probation Department began implementing SB 678, the California Community Corrections Partnership Act. SB 678 provided funding to establish a system of performance based, evidence based practices relating to the supervision of adult felony offenders. In fiscal year 2011/12 Tuolumne County received \$1,198,616 in funding from State AB109 Realignment sources. Estimated funding for Fiscal year 2012/13 is \$100,000 for a combined total appropriation of \$1,298,616. The total program funding was supplemented by onetime SB 678 funds of \$225,000, for public safety realignment programs. AB 109 provides a dedicated and permanent revenue stream to the counties through Vehicle License Fees (VLF) and a portion of the State sales tax. This funding became constitutionally guaranteed by California voters under the passage of Proposition 30 in 2012. There is now a permanent allocation of the ongoing revenues to the counties for AB109 Realignment Programs. AB109 funds can only be used for Realignment Programs, therefore cannot be used towards the construction of a new jail facility. All funds have been placed in the County Local Revenue Fund 2011 trust pursuant to Government Code Section 30025 (f)(1).

Staffing and Jail Capacity:

The County Realignment Plan using state issued AB109 monies, funded the addition of five (5) personnel positions: two (2) Jail Deputies (Classification Officers), one (1) Deputy Probation Officer, one (1) Probation Technician and one (1) Probation Legal Clerk. The Grand Jury noted that one of the Jail Deputy Classification Officer positions is currently vacant due to recruitment difficulties. Even with the additional positions created with AB109 funding, the magnitude of implementation in monitoring the PRCS population has created an enormous workload on the existing Probation Department and Sheriff's Department staff. In addition the Superior Court system and the Tuolumne County District Attorney's (DA) Office have been inundated with the processing of the Post Community Supervision population as regulated by AB109. The Grand Jury visited the DA's office and found boxes of paperwork practically stacked to the ceiling, creating a fire and safety hazard. The DA's office is an old building and the heavy boxes must be stacked against the load bearing walls to prevent floor collapse.

The Realignment Plan estimated that approximately 51 offenders would be released from prison between October 2011 and September 2012 from the California Department of Corrections and Rehabilitation to Tuolumne County for supervision. The Grand Jury found that the number was understated in that it did not take into account misdemeanor offenders being released early due to jail capacity issues. The Tuolumne County Jail (covered in a separate report) is operating at maximum capacity on a daily basis. There is inadequate space at the jail to expand and funding has not been secured as of the time of this report.

Alternatives to Incarceration Programs:

In early 2012 an Alternatives to Detention Center was established by the county contracting with BI Incorporated. The facility is located at 1194 Highway 49. The facility can handle up to 50 medium-to-high risk offenders at a time. The Alternatives to Detention Center provides core community services that include a Day Reporting Center contracted with B.I. Inc. (BI), a Day Treatment Program, an expanded Work Release Program and a special enforcement team to supervise high risk offenders.

The Day Treatment Program is administered under a “Core” Day reporting model. The program offers Moral Reconation Therapy (MRT) and individual cognitive behavioral therapy, both designed to change criminal thinking. The core program components include behavior change planning; cognitive behavior treatment groups; individual cognitive behavioral services, treatment and service coordination, data tracking and program measurement. The core model is designed to be flexible and can be adapted according to targeted client populations, risks and needs and identified gaps in local service. The program lasts 180 days, depending on performance, and operates two days a week on Tuesday and Thursday.

The Work Release Program (WRP) is administered through BI and the Probation Department and offered in lieu of jail time. The WRP is operated seven days a week and basic requirements must be met in order to qualify for program participation.

If an offender is ordered to participate in the Day Treatment or WRP, they must go to the Office of Revenue Recovery and complete a financial assessment. Upon completion of the assessment, the offender must then go to the main Probation Office to begin the enrollment process. The Probation Department does not have any means to accept payments at their physical location. The Grand Jury found that the disjointed process of payments and program enrollment is problematic for individuals participating in these programs.

Two Probation Officers and a Deputy Sheriff comprise a special enforcement team that work in conjunction with BI staff to monitor newly identified post release supervision offenders. The Electronic Monitoring Program (EMP) is contracted with 3M. 3M is a State EMP contractor and provides good coverage in the county for a cost of \$57,000 annually. The Sheriff’s Department has allocated funding in the fiscal year 2012/13 budget to pay for Patrol Deputies to respond to high alert EMP violations which occur after hours and on weekends or holidays. The additional Deputy Probation Officer and Probation Technician provide support to the program by setting up the EMP offender schedules, supervising offenders placed on intensive supervision or EMP and completing compliance checks on offenders to include drug screening, search, program referral and participation to ensure offenders comply with the terms and conditions of their release in cooperation with BI staff.

Electronic monitoring is accomplished through radio frequency (home detention monitoring) and Global Positioning System (GPS) tracking methods. EMP monitoring is enforced through an ankle transmitter bracelet and a home monitoring unit. The person being monitored connects the unit daily in a docking station. This station is plugged into a power outlet, to recharge the device, and to the offender’s home phone line. Ankle bracelet equipment is assigned based on offender needs, level of security required and geographic challenges. The offender is usually responsible to pay for any costs that are associated with using any electronic monitoring instrument, although

people are not generally excluded from the program based exclusively on an inability to pay. Depending on the circumstances of the offense, and on what type of court appointed and Probation Department terms and conditions of release are required, offenders that participate in the EMP program may be permitted to work or attend school, tend to family obligations, attend and participate in counseling appointments, alcohol or drug classes, community service, etc., travel to medical appointments, and participate in any other court approved activities. The ankle bracelet sends a 24 hour signal to the BI agency that provides real time communication of any irregularities. Irregularities include tampering with the instrument or violating curfew or physical locale restrictions. In rural areas where locational GPS tracking points may experience a gap in radio frequency transmission, BI and Probation Department staff closely observes the offender in one hour increments and follow-up phone calls. Any failure to report will result in an immediate program violation and notification to the Probation Department or Sheriff's Department.

Day Treatment Program participants may also be monitored for alcohol and drug consumption. Alcohol consumption is monitored through a Secure Continuous Remote Alcohol Monitor (SCRAM) device. The SCRAM device is also an ankle bracelet, but this bracelet continuously monitors alcohol concentration through the skin (which is known as "transdermal" monitoring), as opposed to monitoring an offenders whereabouts. If the person consumes any alcohol, the device alerts BI and Probation Department staff and they notify the Sheriff's Department and Court of the offender's violation. Drug patches are sometimes used to monitor those convicted of violating California drug laws. These patches are removed and replaced weekly. Once removed, they are tested for traces of marijuana, heroin, PCP, cocaine, and methamphetamines.

Any offender found to be in violation of the conditions of their probation is subject to re-arrest and incarceration by Probation Department and Sheriff's Department deputies, also known as "flash holds". The special enforcement team adds an additional layer of public safety and offender supervision for high risk cases assigned for monitoring. Tuolumne County is one of the only counties in the state that will not allow early release to AB109 flash hold incarcerations. Contact frequency between all involved agencies is maintained at a high level to ensure compliance with court orders, including; drug testing, program enrollment. Communication and cooperation among all agencies is necessary to ensure program violations are handled swiftly and to deter further law violations from occurring. In addition, flash hold notices are issued between departments when any offender is arrested for a crime. Grand Jury members were very impressed with the level of collaboration demonstrated between the Sheriff's Department, Probation Department and BI staff in implementing the adopted Tuolumne County Realignment Plan.

In its initial stages, the program is helping the county to manage early release offenders as part of AB 109 realignment. In addition to the therapy designed to change criminal thinking, an emphasis is placed on employment, school and community involvement. At the time of this writing, two program graduations have taken place with 33 participants completing the program. There are currently 15 individuals that will successfully graduate in approximately 1 month. Since opening in early 2012, the Probation Department reported that six (6) Tuolumne County AB109 classified program participants have recidivated or reoffended.

Findings

- F-1** Under AB109, offenders are classified only by *the present committed offense*, meaning that it is possible that a person with a history of violent, serious, or sex offenses – or even a lengthy criminal history – may technically qualify as a “non-non-non” offender.
- F-2** The number of Post Release Community Supervision cases expected to be released from state prison to local facilities was significantly underestimated.
- F-3** The Tuolumne County Jail facility is operating at maximum capacity. The facility is old, cramped and poorly designed to meet today’s needs. Expansion is not possible and future funding has not been secured for the construction of a new jail facility.
- F-4** The Community Corrections Partnership (CCP) is a cross-functional team made up of key stakeholders who are collaborating effectively on AB109 implementation. The County, through the CCP, has developed a well thought out and progressive approach to AB109, based on a strategy of treatment versus re-incarceration.
- F-5** AB109 state funding fails to recognize the increase in additional demands placed on local law enforcement agencies. The U.S. Supreme Court has mandated that California must reduce its state prison population by 33,000 inmates by the end of 2013. The Probation Department and Sheriff’s Department are not adequately funded through AB109 revenues to implement the aggressive time line set by the State of California to complete the goals identified in the Tuolumne County 2011 Public Safety Realignment Plan. Each Departments workload exceeds their capabilities without proper and sufficient funding.
- F-6** Alternatives to Incarceration Programs must be paid through the Tuolumne County Office of Revenue and Recovery before participants are able to enroll and attend. The current Probation Department or Alternatives to Detention Center has no way to accept payment at either facility.
- F-7** The Superior Court, Sheriff’s Office, Probation Department and the District Attorney’s Office do not have a coordinated, integrated electronic system to send reports and files to one another. AB109 regulation is increasing staff workload, which currently requires staff to physically drive and hand deliver reports and files, a tremendous waste of taxpayer dollars.

Recommendations

- R-1** No Recommendation.
- R-2** No Recommendation.

- R-3** The Grand Jury recommends that the jail facility be replaced immediately. The Grand Jury further recommends that State funding for jail replacement continues to be aggressively pursued by County Administration staff.
- R-4** The Grand Jury recommends that the Community Corrections Partnership continue to work with key stakeholders to identify creative methods for managing the changes that will result from AB109 and develop coordinated responses as needed.
- R-5** The Grand Jury recommends that AB109 realignment and State funding continue to be aggressively pursued by County Administration to adequately staff and administer the Tuolumne County 2011 Public Safety Realignment Plan.
- R-6** The Grand Jury recommends that a method to accept payments for probation fees or monitoring programs be installed within the Probation Department.
- R-7** The Grand Jury recommends that an electronic data management and record keeping system be implemented with the District Attorney's office.

Request for Responses:

Pursuant to Penal code section 933.05, the grand jury requests responses from the following individuals:

- R-3 Replacement of Tuolumne County Jail:**
Tuolumne County Board of Supervisors
Tuolumne County Administrator
- R-4 Community Corrections Partnership:**
Tuolumne County Chief Probation Officer
Tuolumne County Sheriff
- R-5 AB109 Realignment Funding:**
Tuolumne County Board of Supervisors
Tuolumne County Administrator
- R-6 Program Payment System at Probation Department:**
Tuolumne County Board of Supervisors
Tuolumne County Administrator
- R-7 Computerized Record System between Superior Court, Sheriff's Office, Probation Department and District Attorney's Office:**
Tuolumne County Board of Supervisors
Tuolumne County Administrator

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda and open meeting requirements of the Brown Act.

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Tuolumne County Day Reporting Center BI, Inc. Scope of Work and Program reference materials. 2011.

Appendix A: 2012 Tuolumne County Public Safety Realignment Act AB109 Implementation Plan.

**Appendix A- 2012 Tuolumne County Public Safety
Realignment Act AB109 Implementation Plan**

**Tuolumne County
Public Safety Realignment Act AB 109**



Implementation Plan

Tuolumne County Community Corrections Partnership Executive Committee

Honorable Eric L. DuTemple, Presiding Judge, Superior Court

Adele Arnold, Chief Probation Officer

Donald Segerstrom, District Attorney

James Mele, Sheriff

Robert Price, Public Defender

Mark Stinson, Sonora, Chief of Police

Tracie Riggs, Director of Behavioral Health

EXECUTIVE DRAFT
Tuolumne County
Public Safety Realignment Act AB 109
Implementation Plan

BACKGROUND:

In an effort to address overcrowding in California's prisons, Assembly Bill 109, entitled "2011 Realignment Legislation Addressing Public Safety" was signed by the Governor on April 4, 2011. As a result of AB 109, on October 1, 2011 criminal justice realignment went into law. The essence of AB 109 is to transfer the responsibility of supervising specified lower level inmates and parolees from the California Department of Corrections and Rehabilitation to Counties. In addition, new sentencing restrictions/guidelines will divert offenders who would have otherwise gone to state prison into local jails.

Assembly Bill 117 passed concurrently to AB 109, required the local Community Corrections Partnership (CCP), comprised of criminal justice partners, collaborative agencies, and community stakeholders to develop and recommend a plan to each County Board of Supervisors to enable their county to meet the goals of the public safety realignment.

Summary of AB 109 and AB 117 realignment legislation:

- The new legislation tasks Community Corrections Partnerships (CCP) with planning for the change and implementing local plans.
- AB 109 revises the definition of felony to include lower-level crimes that will now be punishable in jail and/or another local sentencing option.

- There is a shift in custody to local authorities of felons sentenced for non-violent, non-serious, non-sex offenses (N3) to county control from the state unless excluded by statute.
- AB 109 authorizes "Split Sentencing", which means a portion of the offender's term is served in jail and the concluding portion served on mandatory supervision.
- Serious violent felons, most sex offenders (all registered), and serious white collar or criminals remain eligible for state prison and state parole supervision.
- Local Post-Release Community Supervision (PRCS) has been established for any individual who was convicted of an N3 crime and will be released from state prison on or after October 1, 2011. The serious violent felons will remain in state parole's jurisdiction.
- PRCS and parole revocations for N3 offenders will serve their time in the County jail and/or through a combination of detention alternative sanctions and programming.
- The legislation authorizes counties to utilize a variety of custody and community based sentencing options. Community based options include electronic monitoring/home detention; Day Treatment Centers; Work Release Programs; Day reporting Centers; and other therapeutic and vocational programming as deemed appropriate.

TUOLUMNE COUNTY:

Tuolumne County was incorporated in 1850 and currently has a population of 57,000 residents. Tuolumne County covers a large mostly rural, geographic area with several cities and multiple smaller communities spread throughout. The County has been significantly impacted by the recent economic downturn. The unemployment rate in

Tuolumne County is currently 13.5% and one in every 72 housing units received a foreclosure filing in August 2011.

The County Jail is currently operating at capacity and offers no room for expansion and/or renovation to accommodate new populations. While a new jail is part of an existing plan for the new criminal justice campus, funding and timelines have not been secured. In the meantime, the current jail will be significantly impacted by housing the AB109/Realignment population. Therefore, all planning for local incarceration must use the existing jail infrastructure.

In 2009, the Tuolumne Probation Department began implementing SB 678, California Community Corrections Partnership Act. SB 678 provided funding to establish a system of performance-based, evidence-based practices relating to the supervision of adult felony offenders. SB 678 was designed to reduce the felony probation failure rate which resulted in felons being sentenced and/or returned to state prison.

Tuolumne County Probation Department utilized SB678 funds to implement a comprehensive validated risk/needs assessment tool, the Static Risk and Offender Needs Guide (STRONG) for use in the criminal justice community. Additionally staff received training in Motivational Interviewing and how to administer and maintain the fidelity of the risk assessment tool. Additional training in Evidence Based Practices was also provided to staff. Tuolumne County will use SB678 allocations to provide first year funding for a major component of the AB109 plan-the Day Reporting Center.

THE IMPLEMENTATION PLAN

The County's Community Corrections Partnership (CCP) members have met frequently to structure a phased response to Public Safety Realignment as well as meet the immediate need of providing direction and services intended in the legislation.

The CCP is made up of representatives from the Sheriff's Department, District Attorney's Office, Victims Witness Office, Office of Education, Behavior Health

Department, Public Defender, Human Services Agency, Administrator's Office, Superior Court, Probation Department, Bar Association, Sonora Police Department and Mother Lode Job Training.

The CCP's Executive Committee's seven voting members include:

- Honorable Eric L. DuTemple, Presiding Judge, Superior Court
- Adele Arnold, Chief Probation Officer
- Donald Segerstrom, District Attorney
- James Mele, Sheriff
- Robert Price, Public Defender
- Mark Stinson, Sonora, Chief of Police
- Tracie Riggs, Director of Behavioral Health

The CCP agreed that the plan for AB 109 programming should be phased to implement and plan concurrently. Due to the uncertainty of the overall impacts resulting from realignment, there are numerous issues to be resolved. The state continues to manage the public safety realignment as a work in progress (addressing conflicting codes; clarifying processes).

Consistent with local needs and resources, the plan required by AB 109/117 should include recommendations to maximize the effective investment of criminal justice resources in evidence-based correctional sanctions and programs, including, but not limited to: day reporting centers, mental health treatment programs, electronic and GPS monitoring programs, victim restitution programs, counseling programs, community service programs, educational programs, and work training programs

With the October 1, 2011 start date and an anticipated AB 109 resource allocation that will **not** cover all costs, the CCP is presenting a phased Implementation Plan for adoption by the Board of Supervisors. A fiscal impact statement was developed and approved by the Executive Committee of the (CCP) and is submitted as part of this plan

for approval by the Board of Supervisors. The attachment reflects the overall concern regarding adequate funding for the implementation of the realignment legislation.

Phase One will span the first nine months and will allow the justice system partners to determine the impacts of the realignment offender population on the Courts, District Attorney, Sheriff, Public Defender and Sonora Police Department plus other service providers in Tuolumne County. In addition to impact determination, the plan recommends implementing a variety of evidence based programs to supervise and rehabilitate this new population including but not limited to a Day Reporting Center, Day Treatment Program, expansion of existing Work Release Programs, and other community based programming as necessary. Phase Two will continue with the implementation of Phase One programs while adding or expanding programs and determining the impacts on the entire County.

The Probation Department has identified four population groups that will need services effective October 1, 2011:

- Approximately **51** offenders will be released from prison between October 1, 2011 and September 2013 from the California Department of Corrections and Rehabilitation back to Tuolumne County for supervision. As designated in the legislature, a post release supervision cannot exceed a period of three years, however, offenders may be discharged earlier following a period of successful community supervision; any revocations will be served in county jail for up to 180 days in length. Also, as directed in the realignment legislation, probation is to supervise under appropriate terms and conditions of probation consistent with evidence based practices, treatment services and a series of progressive incentives and sanctions.
- The current misdemeanor population who will be shifted from in-jail custody to community corrections supervision and programming to make space for more serious offenders under new sentencing guidelines.

- Future misdemeanor offenders who will be subject to alternative sentencing including custody, and various community based supervision and alternative sentencing programs and sanctions.
- The felony offender sentenced to local terms of imprisonment-These offenders include "Split Sentencing" population.

Phase One of the Tuolumne Plan will include the following.

- **Day Reporting Center:**

The Day Reporting Center (DRC) is a multi-phased, highly structured and supervised program contracted through Behavioral Interventions INC. (BI). The DRC will be a one stop center for offender accountability and evidence-based supervision and services. Activities include-assessment and individualized behavior change plans; frequent reporting, drug and alcohol testing, 3-5 hours of cognitive behavioral treatment classes per week, individual cognitive skill building, behavioral therapy sessions, periodic progress evaluations, and aftercare services. Services are and treatment will be provided for eligible offenders as identified through assessment. The program takes approximately 180 days to complete. In the first year this program is funded by the Probation Department SB678 allocation. This program will be implemented and operated through a contract.

- **Electronic Monitoring Program:**

BI, Inc. in cooperation with designated County law enforcement agencies will manage an electronic monitoring program. The CCP will assign the equipment based on offender needs, level of security required and geographic challenges. The program will also allow for drug testing and alcohol monitoring. This is an offender paid program with concessions made for indigent populations and subsidy when necessary.

- **Day Treatment Center:**

The Day Treatment Program (DTP) will be managed by Probation and Sheriff Department staff. This will be a treatment and intervention program operated for misdemeanants in lieu of jail. Offenders cannot exit once checked in. The programming is very structured from 8:30 a.m. to 4:30 p.m. The DTP may include behavioral treatment programming, substance abuse programming and vocational services. The DTP is planned to accommodate up to 30 participants per day and will operate up to 5 days per week in the first year.

- **Work Release Program (Expansion):**

The Work Release Program (WRP) will be expanded and will provide an alternative to incarceration while further reducing overcrowding in the County's Jail. The WRP will be offered 7 days per week and will provide tiered supervision based on assessed risk levels of the offenders. Work sites include county facilities, nonprofit agencies, and other governmental agencies (such as: cities, federal, parks, schools, etc.). Offenders will be supervised by Probation staff and/or other approved participating agency personnel. The program is an offender paid program with a sliding fee scale to accommodate all offenders. There are physical and medical limitations to program participation that must be enforced.

The CCP Executive Committee determined that in order to effectively manage and implement elements of the plan, they needed the initial phase of the plan validated by a survey and interview process with key members of the CCP, Tuolumne County Leaders and Community Partners.

As a result of the survey, implementing actions and short term recommendations are outlined for Phase One that will require time and resources. These are submitted to the Board of Supervisors as part of this plan for approval.

- **Acquisition of a facility for programs:**

Several facility options were reviewed by the Probation Department, CCP and CAO's Office. The lease and tenant improvements will be submitted for approval and processing. All furnishings, Information Technology needs, and supplies will be included in the AB109 budget.

- **Development of a Training Protocol for staff**

Funds are designated in the AB 109 Planning and Start-up allocation for training staff to supervise this offender population and provide programming at the DTP. The training will be developed and/or purchased to provide tools to manage the new population in the alternative sentencing programs as well as the new population at the jail.

- **Preparing budgets:**

Funds allocated for year one (first 9 months) from AB 109 are \$598,767. In addition, there is a onetime planning and start-up/training allocation of \$142,250. All funding can be utilized in the first year and/or rolled over to future years.

The 2011-2012 programming will be augmented by onetime SB 678 funds of \$225,000 which will be used to operate the Day Reporting Center. Attachment B summarized the Phase One budget, staffing allocations and associated revenues. The budget is submitted to the Board of Supervisors for approval as part of the adoption of this plan.

A detailed first year budget will be developed and tracked with mid-year recommendations of carry-overs to determine level of programming possible in year two.

- **Definition of first phase goals**

As a result of the interview and survey process, four overall implementation goals are established by the CCP and recommended to the Board of Supervisors for approval and monitoring. The CCP will report to the Board of Supervisors at least quarterly regarding the progress and status of the Realignment Implementation and these goals.

Goal One-Complete the Implementation Plan with summary strategies and actions for approval by the Board of Supervisors

Goal Two-Open the facility with partners, contractors and equipment in place

Goal Three-Begin operational and programming status of the first four components of Phase I Realignment Implementation: Day Reporting Center, Day Treatment Center, Electronic Monitoring, and Expanded Work Release Program

Goal Four-Design a basic monitoring process to track internal and external impacts of the AB 109 Implementation as identified by the CCP, Board of Supervisors, and community partners. The internal impacts would include references to budget, training and implementation milestones-the external impacts would include information regarding community safety and crime statistics)

- **Secure contract for the Electronic Monitoring Program and operation of Day Reporting Center**
- **Identification of sentencing alternatives for current and future misdemeanants:**

The identification of specific sentencing options must be developed to provide the courts with alternatives for low-level misdemeanor and felony offenders that have distinct consequences are structured and enforced. The new facility with

the Phase I programming will be an integral part of the new and different alternatives needed to relieve jail space issues.

- **Development of all procedures and programming options for the Day Treatment Program**

The DTP will be managed by Probation and Sheriff's Department staff. The curriculum and design of the daily activities for a group of 25 to 30 misdemeanants must be structured and planned.

- **Development of community resources for offenders:**

Services at the center will focus on structured and supervised programming to identify and address specific criminogenic needs while providing alternatives to incarceration. An essential element in changing behavior as presented in Evidenced Based Practices is addressing basic personal needs (in addition to identified criminogenic needs) of housing, food, transportation, and clothing. It is recommended that a committee be formed to bring community resources into the discussion in order to determine what services would be available to this population without disrupting their current service delivery system.

- **Development of educational and employment resources:**

A process will be implemented to access local education resources and to access employment services such as those provided by the Mother Lode Job Connection.

- **Development of Mental and Behavioral Health assessments and short term services**

It is anticipated that a portion of the realignment population in addition to the current and future offenders have long standing, unaddressed mental health and/or substance abuse issues. Assessment, treatment and appropriate services (including medications) must be developed and considered in the

context of critical risk reduction strategy. It is recommended that a committee is formed to identify a service process for this population. For example, Tuolumne County participated in a state funded MIOCR (Mentally Ill Offender Crime Reduction Grant) program that provided services to the offender population.

- **Development of a Special Enforcement Team.**

The purpose of the team is to add an additional layer of public safety and offender supervision. This team will include 2 Deputy Probation Officers and 1 Deputy Sheriff. It is expected that in the supervision of all high risk cases assigned for monitoring by this team, the contact frequency will be high to ensure compliance with court orders, including drug testing, program enrollment, and to ensure program violations are handled swiftly to deter further law violations from occurring. The special enforcement team will also make arrests under the provisions for flash incarceration. The majority of the contacts will be made at the offender's residence.

- **Development of a data collection/monitoring component**

The state has yet to identify any specific performance measures for the AB 109 realignment implementation. A basic data collection component will be designed and implemented to track participation and disposition of those released by the state as well as a separate category for the low-level offenders who participate in the alternative programming.

PLANNING FOR PHASE TWO

- **Programming:**

As the Probation Department and CCP initiate and monitor the implementation of the AB 109 Public Safety Realignment Program for Tuolumne County, there will be mid-course corrections throughout the process. Going forward, the committee must evaluate the success of the different programs and consider, depending on funding and outcome measures, continuing existing service, providing additional programs, or even discontinuing programming. Programs that should be considered for the future are evidence-based options that include but are not limited to:

- Expanding Cognitive Behavioral Therapy (CBT)
- Community-based residential programs targeting offender populations
- Mandatory community service and community integration (community service is already ordered in many cases)
- Mandatory substance abuse treatment even with the very limited funding available
- Mother-infant care programs
- Restorative justice programs
- Victim Awareness Program
- In custody transitional planning
- Family reintegration
- Pre-trial assessments
- Faith Based Outreach and Programming
- Securing Transitional Resources-such as clothing, shelter and food
- Expanded educational and vocational programming both in custody and post release
- In custody case planning for future release and programming

- **Reporting:**

Throughout Phase One, general activities can be reported in narrative format. Phase Two reports should be evaluated and modified to ensure information gathered reflects the needs of the CCP, Probation Department and Tuolumne County relative to internal and external goals.

- **Funding:**

Throughout Phase One, costs will be tracked for all expenditures in support of the realignment offender population. A report should be reviewed with the CAO and CCP reflecting the collateral, unfunded costs of the legislation.

SUMMARY

The Tuolumne County Public Safety Realignment Act Implementation Plan is intended to provide a comprehensive approach to addressing public safety, while maximizing strategies to effectively address criminal recidivism. Elements of the plan manage offenders that will be returning to Tuolumne from state prison and those who will not now be going to state prison. In addition, the plan targets alternatives to traditional incarceration for future offenders by focusing on developing a core one stop treatment center and additional evidence based programs to supervise and rehabilitate this new realignment offender population while reserving scarce jail beds for the most serious offenders.

The Community Corrections Partnership Executive Committee thanks the numerous county, city and community partners for their input in the development of this Plan. Their continued support and involvement will be needed to ensure the safety of our community and successful Plan outcomes.

**Tuolumne County
Public Safety Realignment Act AB 109
Implementation Plan
Fiscal Impact Statement**

The following statement was developed and approved by the Executive Committee of the Tuolumne County Community Corrections Partnership (CCP) and is submitted as part of this plan for approval by the Board of Supervisors.

“Although AB 109 delineates a funding formula for implementation of this legislation, after review of the needs of this county it appears that the initial funding is not adequate to accomplish the specified objective of realignment or to establish the framework necessary to implement the Community Correction Partnership plan within the aggressive time line set by the State of California.

The Tuolumne County CCP is very concerned that the State of California significantly underestimated the capacity of the Tuolumne County Probation Departments staffing allocations plus the Sheriff's Department's Jail. There is an undeterminable impact of redirected future sentencing of felons requiring local incarceration and the need for alternate sentencing options and community supervision for current and future no violent, non serious, non sex offenders and misdemeanants. There is inadequate funding available within the allocation to provide additional beds or build a new jail.

In order to provide maximum safety within our community, the CCP and justice partners will place emphasis on enforceable consequences for offenders in sentencing and will provide services to ensure the highest probability of success for this population. Every effort will be made to deal with the offenders, but serious concerns exist relative to the impact on the county as a whole and lack of stable and adequate funding.”

Attachment B

Expenses	Details	Agency	AB 109 Funding	Training-AB109	Planning AB109	DA/PD-AB109	SB678	Total FY 11-12(6 months)	Annual Cost
Salary and Benefits	1 DPO	Probation	\$46,958					\$46,958	\$93,916
	1 Sheriff Deputy	Sheriff	\$49,113					\$49,113	\$98,226
	1 Probation Tech	Probation	\$28,636					\$28,636	\$57,272
	0.5 Office Assistant	Probation	\$12,464					\$12,464	\$24,928
	2 Work Release Coord	Probation	\$58,018					\$58,018	\$116,036
	Relief Probation Aide(s)	Probation	\$36,536					\$36,536	\$73,072
	1 DPO	Probation					\$54,000	\$54,000	\$72,000
	1 Probation Tech	Probation					\$35,000	\$35,000	\$46,666
Fixed Assets	Vehicles (3)	Probation	\$50,000				\$27,000	\$77,000	\$0
Contract Services	Day Reporting Center	BI Inc.					\$116,000	\$116,000	\$225,000
	Electronic Monitoring	B Inc/TBD	\$50,000					\$50,000	\$100,000
	AB109 Plan Development	Consultant			\$6,000			\$6,000	\$0
Rents/Leases	Building Lease	County	\$37,500					\$37,500	\$50,000
Supplies/Services	Work Release Equipment	Probation	\$15,000					\$15,000	\$7,000
	Curriculum for Programs	Probation	\$25,000					\$25,000	\$10,000
	Drug Testing	Probation	\$25,000					\$25,000	\$25,000
	Supply/Contracts	County	\$50,000				\$25,000	\$75,000	\$75,000
	Case management/Data	Probation	\$10,000				\$75,000	\$85,000	\$30,000
District Attorney	DA budgeted	DA				\$10,732		\$10,732	
Public Defender	PD Budgeted	PD				\$10,732		\$10,732	
Sub-total			\$494,225	\$0	\$6,000	\$21,463	\$332,000	\$853,688	\$1,104,116
Rollover			\$104,543	\$42,250	\$94,000	\$0	\$83,225	\$324,018	
Total Revenue			\$598,768	\$42,250	\$100,000	\$21,463	\$415,225	\$1,177,706	\$798,180
Balance			\$0	\$0	\$0	\$0	\$0	\$0	\$306,936

FY 11-12	Category Total
AB 109 Salary/Benefits	\$231,725
AB 109 Fixed Assets	\$50,000
AB 109 rents/leases	\$37,500
AB109 Services/Supply	\$175,000
Total	\$494,225
SB678 Salary/Benefits	\$89,000
SB 678 Fixed Assets	\$27,000
SB 678 Services/supply	\$216,000
Total	\$332,000

* AB109 Funding and Training AB109 revenue streams, totaling \$640,928, are the revenues which are not currently recognized in the FY11-12 budget and need Board Authorization.

Exhibit 1 – Tuolumne County Grand Jury Investigation Matrix

Grand Jury Investigation Matrix													
Legend: X - Investigations C - Complaints F - Followup to Previous Reports													
Department	Year	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09/10	10/11	11/12	
Board Of Supervisors													
Board Of Supervisors							X						
County Travel													
County Administration Office													
County Administrator's Office													
Salary Increases - County Administrator			X										
County Compensation and Benefits												X	
Ethics									C				
Morale					X								
Claims & Settlements								X					
Facilities Management					X								
County Administrative Officer			X	F									
County Budget				X									
Human Resources Department								X					
Information Systems and Services			X										
Office of the County Counsel													
County Counsel													
Salary Increases - County Council			X										
Finance													
Assessor-Recorder					X						X		
Financial Archives					X								
Clerk / Auditor - Controller			X		X	X	X				X		
Mgt/Over-sight of Fiscal Affairs			X										
Public Audit			F				X						
Tax Collector - Treasurer											X		
Office of Revenue and Recovery					X							X	
Clerk/Elections Division/Registrar of Voters						X			X				
Visitors Bureau / Film Commission													
Development and Regulatory													
Community Resources Agency (formally		X								X			
A.N. Francisco Bldg. Hours of Operation					C								
Planning Department						X							
Building Department						X							
Building and Safety													
Environmental Health												X	
Geographic Information Systems Division						X							
Building and Planning Clerical Staff						X							
Code Compliance						X							
Department of Public Works						X						X	
Engineering Development Division						X							
Solid Waste Management								C					
Jamestown Landfill										X			
Jamestown Mine Property			X									X	
Educational Reimbursement (DPW)					X								
Jamestown Beautification Project (DPW and Planning Department)						X							
Tuolumne County Transit												X	
Fire Prevention						X							
Tuolumne County Fire Protection											X		
Ambulance - Fire							X						
City of Sonora - Development Bungalows @ Woods Creek					C								

Grand Jury Investigation Matrix

Legend: X - Investigations C - Complaints F - Followup to Previous Reports

Department	Year	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09/10	10/11	11/12
Community Services												
Airports			X							X		
Library							X					
Animal Control			F		X					X		
Carlo M. DeFerrari Archives			X									
Parks and Recreation												
Recreation Department			X									
Youth Centers												
Sierra Railroad Right Of Way			F/X									
Vetern's Services			X							X		
Education												
Special Education			X									
Schools Consolidation									X			
School Superintendent and Staff Salaries			X									
Sonora Union High School										X		
Summerville High School												
Bellevue Elementary School District												
Big Oak Flat Groveland Unified School District / Tenaya School			C	F								
Columbia Union School District												
Curtis Creek School School District												
Jamestown School District												
Sonora School District												
Summerville School District												
Soulsbyville School District												
Twain Harte Long Barn Union School District												
Yosemite Community College District												
Agriculture												
Farm Advisor				X						X		
Department of Agriculture												
Agriculture Commissioner					X							
Agriculture Programs					X							
Weights and Measures					X							
Air Pollution Control					X							
Special Districts												
Economic Development Company												
Central Sierra Planning Council												X
Tuolumne Utilities District			X	X								
Twain Harte Community Services District								X				
Groveland Community Services District			F									X
Tuolumne City Sanitation District											C	
Tuolumne City Parks and Recreation											X	
Tuolumne City Fire District											C	
Tuolumne City Lighting District											X	
Tuolumne City Memorial Hall												
Carters Cemetary											X	
Fire Protection Districts											X	

Grand Jury Investigation Matrix													
Legend: X - Investigations C - Complaints F - Followup to Previous Reports													
Department	Year	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09/10	10/11	11/12	
Human Services													
Amador/ Tuolumne Community Action Agency						C							
Human Services Agency/Dept of Social Services						X		X					
Adult Protective Services						X							
Child Protective Services / Child Welfare		X		X	F	C	X			X			
Eligibility Division		X											
Health Department										X			
Women, Infant, Child Program					C	X							
Behavior Health / Mental Health / Alcohol / Drug Services (Kings View)			F				X		X				
In Home Support Services		X											
Adult Welfare													
Area 12 on Aging						X							
Senior Center										X			
Tuolumne General Hospital			X	X	X	X							
Office of Emergency Services						X			F				
Office of Bio-Terrorism						X							
Criminal Justice													
District Attorney													
Probation					C						X		
Early Release Program										X			
Juvenile										X			
Drug and Alcohol Court										X			
Public Defender			X							X			
Sheriff's Department		X	X								X		
911/Emergency Response								X	X				
Tuolumne County Jail		X	X	X	X	X	X	X	X	X	X	X	
Superior Court Transportation & Detention										X			
Jim Mele							X						
Law And Justice Center										X			
Narcotic Task Force / Tuolumne Narcotics Team								X			X		
Sierra Conservation Center		X	X	X		X	X	X	X	X	X	X	
Grand Jury Audits													
Continuity Committee (Response Monitoring)											X		
Conflict of Interest State of Economic Interests Form 700			X										
The Brown Act													
Grand Jury Recommendations/Responses			X			X			X				
Correspondence Committee													
Investigation Matrix								X	X	X	X	X	
Website						X							
	Indicates Entities with No Record of Review												
	Indicates Entities with over six years of no review												

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