

NAPA COUNTY GRAND JURY

2012-2013



Photo courtesy of Hilary Wardlaw

CONSOLIDATED

FINAL REPORTS

**Napa County Grand Jury
2012-2013**

CONSOLIDATED FINAL REPORTS

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NAPA COUNTY GRAND JURORS 2012-2013



Rear (L to R):	John Hall; Richard Faenzi (pro-tem); Jim Verhey; Ron Appel; Curtis Susuki; Vic Connell (foreman); Harold Shepard
Middle:	Bonnie Thoreen; Kathryn Tunstall; Bob Bianco; Shirley Swanson; Suzanne Lapuyade; Mike Snider.
Front Row:	Barbara Lum; Jennifer Jelinek; Hilary Wardlaw; Brenda Schneider (secretary); Lynnette Sands. <i>(Not in photo – Scott Jensen)</i>

NAPA COUNTY GRAND JURORS 2012-2013

Victor J. Connell (foreman)	Napa
Ronald Appel	Napa
Robert L. Bianco	Calistoga
Richard A. Faenzi (pro-tem)	Napa
John Hall	Napa
Jennifer Jelinek	Napa
Scott Jenson	Napa
Suzanne Lapuyade	Napa
Barbara Lum	Napa
Lynnette Sands	Napa
Brenda Schneider (secretary)	Napa
Harold L. Shepard	Napa
Ray Michael Snider	Napa
Curtis R. Susuki	Napa
Shirley I. Swanson	Napa
Bonnie L. V. Thoreen	St. Helena
Kathryn A. Tunstall	Napa
James F. Verhey	Napa
Hilary W. Wardlaw	Napa



A Tradition of Stewardship
A Commitment to Service

NAPA COUNTY GRAND JURY
P.O. BOX 5397
NAPA, CALIFORNIA 94581

June 24, 2013

The Honorable Diane M. Price
Presiding Judge, 2012
County of Napa
Superior Court of California
825 Brown Street
Napa, California 94559

The Honorable Mark S. Boessenecker
Supervising Grand Jury Judge
County of Napa
Superior Court of California
825 Brown Street
Napa, CA 94559

Re: 2012-13 Napa County Grand Jury Reports

Dear Judges Price and Boessenecker:

The 2012-13 Napa County Grand Jury is pleased to present our Consolidated Final Reports to the Presiding Judge and the Grand Jury's Supervising Judge of the Superior Court of California, County of Napa.

On behalf of the Grand Jury I wish to acknowledge and thank Judge Boessenecker and Deputy County Counsel Silva Darbinian for their helpful reviews of our proposed reports as well as the advice offered by Napa County District Attorney Gary Lieberstein and his staff. We also appreciate the Napa Superior Court Chief Executive, Richard Feldstein, and his assistant Connie R. Brennan for their supportive and efficient administration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Victor J. Connell".

Victor J. Connell
Foreman
2012-13 Napa County Grand Jury



A Tradition of Stewardship
A Commitment to Service

NAPA COUNTY GRAND JURY

P.O. BOX 5397

NAPA, CALIFORNIA 94581

June 24, 2013

To the Citizens of Napa County:

The 2012-13 Napa County Grand Jury is privileged to present our Consolidated Final Reports resulting from our investigations during our term of service for our county.

The nineteen members of our Grand Jury were sworn in July 2012. We served under Napa Superior Court Presiding Judge Diane M. Price and Supervising Judge Mark S. Boessenecker. Judge Boessenecker's and Napa Deputy County Counsel, Silva Darbinian's, reviews of our individual proposed reports were much appreciated. Napa County District Attorney Gary Lieberstein and his staff served as our advisors in regard to any criminal matters. The Napa Superior Court Chief Executive, Richard Feldstein, and his assistant Connie R. Brennan, were our administrative support.

The 2012-13 Grand Jury members served for a period of one year. We appreciate each other's commitment to provide time, talent and hard work in volunteer support to our community. Our investigations included many interviews of elected and appointed officials, county employees and private citizens, as well as on-site visits and facility tours. Not all of these interviews or investigations resulted in a published report.

Our efforts resulted in the Grand Jury releasing seven individual Final Reports as they were completed, approved by the Grand Jury, and reviewed by the Supervising Judge and the Deputy County Counsel. These reports are available for viewing or downloading on the Napa County Grand Jury Web Page, located here: <http://www.napa.courts.ca.gov/general-info/grand-jury>.

All of the Grand Jury members appreciate our investigative and educational experiences and the opportunity to volunteer in service of our fellow citizens in Napa County.

Regards,

A handwritten signature in black ink, appearing to read "Victor J. Connell".

Victor J. Connell
Foreman, on behalf of the members of the
2012-2013 Napa County Grand Jury

ACKNOWLEDGEMENTS

The 2012-2013 Napa County Grand Jury wishes to acknowledge assistance and support from the following people:

Hon. Diane M. Price, Presiding Judge of the Napa Superior Court

Hon. Mark S. Boessenecker, Supervising Judge to the Grand Jury, Napa Superior Court

Gary Lieberstein, Napa County District Attorney

Minh C. Tran, Napa County Counsel

Silva Darbinian, Chief Deputy County Counsel

Richard Feldstein, Napa Superior Court, Court Executive Officer

Connie Brennan, Administrative Assistant to Court Executive Officer

Joseph Peatman, President, Gasser Foundation

Terri Niles, Office Manager, Gasser Foundation

Nancy Watt, Napa County Executive Officer

Elizabeth Habkirk, Senior Management Analyst, Napa County Executive Office

Pat Grisham, Executive Assistant, Napa County Executive Office

News and Production Staff, *Napa Valley Register*

Randy Guerrieri, owner, *The Copy Corner*

California Grand Jurors Association

Napa Chapter, California Grand Jurors Association

The Supportive Families of the Grand Jury Members

INTRODUCTION

NAPA COUNTY GRAND JURY

The 2012-2013 Napa County Grand Jury served a one year term from July 2012 through June 2013. The following provides a broad overview of the Grand Jury, its history, what it is and how it functions.

HISTORY

The Grand Jury has its historical roots in the old English grand jury system, the purpose of which was to protect citizens from the arbitrary power of the Crown. The American system continues to retain the goal of protecting residents from abuse by local government. The Grand Jury is an arm of the court system rather than the District Attorney's office and is not a law enforcement agency.

DEFINITIONS

Section 888 of the California Penal Code provides that a Grand Jury be comprised of the required number of citizens charged and sworn to investigate into county matters of civil concern. Based upon its population, the required number of Grand Jurors for Napa County is 19.

FUNCTIONS

The Grand jury functions as one independent body. All matters discussed are kept private and confidential. It is the responsibility of the Grand Jury to examine all aspects of county and local government to ensure that they are being operated honestly and efficiently. The Presiding Judge of the Superior Court, the District Attorney, the County Counsel and the State Attorney General can, and do, provide, advice, but they may not prevent the Grand Jury from acting within its jurisdiction except for legal cause.

A county Grand Jury does not have jurisdiction in state or federal matters and cannot investigate state or federal agencies, nor does it have any jurisdiction over the courts or a matter that is in litigation. For the most part, Grand Juries function as civil Grand Juries rather than criminal Grand Juries. The California Supreme Court has held that the Grand Jury does not have inherent powers to establish its own investigative apparatus for the detection of crime. Moreover, a Grand Jury does not engage in fishing expeditions, have hidden agendas, or meddle indiscriminately. Conflict must be avoided.

The scope of inquiry of a Grand Jury is limited to subjects founded upon knowledge which comes to the Grand Jury from the public, by information acquired from Grand Jury investigations or from individual Grand Jurors' own observations. For the most part, Grand Jurors are charged with investigating the operations, accounts and records of the officers and departments of local government and the method or system those officers and departments employ in performing their duties. In general, all non-State and non-Federal governmental agencies within Napa County, and events involving those agencies, can be investigated by the Grand Jury.

HOW INVESTIGATIONS ARE CONDUCTED

Grand Jury members initially meet with the management and staff of an agency. The various records and the physical facilities of the agency are inspected, and representative public meetings, if any, are attended. Leads that might provide additional information are followed. Eventually, proposed findings and recommendations for the agency are developed and approved by at least 12 of the 19 Grand Jurors.

Grand Jurors are expected to be fair, to show sound judgment, to maintain absolute confidentiality, and to serve as representatives of the public. Therefore, the Grand Jury is not the forum from which to express narrow political ideals or viewpoints, but is the organization which seeks to better the present local governmental agencies/organizations.

GRAND JURY FINAL REPORTS

The Grand Jury may choose to issue a final report on an investigation as it is completed. After the approval of the Presiding Judge and two working days prior to public release, the Grand Jury is required to provide a copy of the report to each affected agency or person. *No officer, agency, department, or governing body of a public agency shall disclose any contents of the Report prior to its public release.* Copies of the Grand jury final reports are maintained on file in the office of the Court Executive Officer and the Clerk of the Board of Supervisors, where they remain accessible to the public. Final reports are also available at County libraries, in local public newspapers and on the following website, www.napa.courts.ca.gov.

Agencies or elected officials are required to make responses in writing to the Presiding Judge of the Superior Court of California, Napa County, within 60 days and 90 days respectively after submittal of the report to them. The responses must be placed on file with the clerk of the investigated agency/department and at the office of the Court Executive Officer and may be accessed by the public at those locations. They may also be accessed on the following website, www.napa.courts.ca.gov. At the end of its term, the Grand Jury must publish a consolidated final report.

RESPONSE TO FINAL REPORT

The legal requirement for response to Grand Jury findings and recommendations are set forth in California Penal Code, Section 933.05. Each respondent needs to become familiar with those legal requirements and, if, in doubt, consult with legal counsel before responding. For the assistance of respondents, Section 933.05 of the Penal Code is summarized below.

How to Respond to Findings

The responding person or entity must respond in one of two ways:

- That they are in agreement with the finding or

- That they disagree, wholly or partially, with the finding. In which case, the respondent shall specify the portion of the finding that is disputed and shall include an explanation of the reasons for the disagreement.

How to Report Action Taken in Response to a Recommendation

Recommendations by the Grand Jury require action. The responding person or entity must report action on each recommendation in one of four ways:

- The recommendation has been implemented, with a summary of action(s) taken.
- The recommendation has not been implemented, but will be implemented in the future, with a time frame for implementation.
- The recommendation requires further analysis. If a respondent replies in this manner, the law requires a detailed explanation of the analysis or study and a time frame not to exceed six months from the date of publication of the Grand Jury's final report by which time the recommendation will be discussed.
- The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation as to why it is not warranted or reasonable.

Budgetary or Personnel Recommendations

If a finding or recommendation deals with budgetary or personnel matters of a county department headed by an elected officer, both the elected officer and the Board of Supervisors shall respond, if the Grand Jury so requests. While the response of the Board of Supervisors may be somewhat limited, the response by the department head must address all aspects of the findings and the recommendations.

Time and to Whom to Respond

The Penal Code provides for two different response methods:

- Public Agency – The governing body (i.e. Board of Supervisors, a City Council, a Board of Directors, a Board of Governors of a Special District, a School Board, etc.) of the public agency must respond within 90 days of service of the final report. The response must be addressed to the Presiding Judge of the Superior Court.
- Elected officer or Agency Head – All elected officers or heads of agencies that are required to respond must do so within 60 days of service of the final report. The response must be addressed to the Presiding Judge of the Superior Court, with a copy to the Board of Supervisors.

REQUIREMENTS TO BECOME A NAPA COUNTY GRAND JUROR

Grand Jurors must meet the following legal qualifications:

- Be at least 18 years of age
- A citizen of the United States
- A resident of Napa County for at least one year prior to the next July

- In possession of natural faculties, be of ordinary intelligence, sound judgment and of fair character
- Possess sufficient knowledge of the English language
- Not discharged as a Grand Juror in any California court within one year prior to the next July
- Never convicted of malfeasance in office or any felony or other high crime
- Not currently serving as an elected public officer

TERM OF SERVICE

Each July, nineteen citizens of Napa County are sworn as Grand Jurors to serve for a period of twelve months. Grand Jury is considered to be, at minimum, a 20 hour per week commitment, with each Jury establishing its own work schedule. Everyone who is selected to serve must be fully cognizant of the time involved. Each prospective nominee should thoughtfully weigh any and all personal and business obligations before accepting the nomination.

The Superior Court Judges select persons who represent the cultural, ethnic and diverse life experience of residents of Napa County so that the Grand Jury may reflect the many interests and concerns of the citizens. In addition, the selection process for Grand Jurors involves a random choice of prospective jurors and alternates.

HOW TO APPLY FOR THE GRAND JURY

All residents of Napa County are offered the opportunity to volunteer to be a member of the Grand Jury by filing an application (www.napa.courts.ca.gov). Judges and friends of the courts may also nominate County residents. Each Grand Jury is impaneled for one year from July 1, through the following June 30. Up to ten members, in their initial term of service, may volunteer to hold over for an additional year.

Applications for the next Grand Jury may be submitted at any time during the year prior to April 15th. Apply for the Grand Jury by filling out and submitting an online questionnaire or by contacting the Napa County Superior Court Administrative Assistant at the address listed below.

CITIZEN COMPLAINTS AND LETTERS TO THE GRAND JURY

The Grand Jury is mandated by law to respond to letters of complaint by citizens and to inquire into the conditions of public detention facilities. Correspondence may be received from citizens expressing concern or requesting investigation of various city agencies, county agencies or special districts. Each complaint is reviewed by the Grand Jury and action is taken in one of the following ways:

- Investigate the matter and make a report
- Investigate the matter and make a decision not to follow up the complaint
- Make a decision not to follow up the complaint without investigation

It is desirable to submit a request at the beginning of the Jury's term so that the Grand Jury will have sufficient time to investigate the matter. Due to time constraints, a Grand Jury may refer

complaint to the subsequent year's Grand Jury.

**FOR AN APPLICATION, GENERAL QUESTIONS, COMMENTS,
OR MORE INFORMATION, PLEASE WRITE, CALL OR EMAIL:**

Connie Brennan, CCLS Court
Administrative Assistant
Superior Court of California

County of Napa
825 Brown Street
Napa, CA 94559

Telephone: (707) 259-8305

Fax: (707) 299-1250

E-mail: grandjury@napa.courts.ca.gov



A Tradition of Stewardship
A Commitment to Service

NAPA COUNTY GRAND JURY

2012-2013

APRIL 25, 2013

FINAL REPORT

ON THE INTEGRITY OF GRAND JURY INVESTIGATIONS

ON THE INTEGRITY OF GRAND JURY INVESTIGATIONS

SUMMARY

During the course of executing its statutory responsibilities, the 2012-2013 Napa County Grand Jury conducted extensive inquiries and investigations into the operations of certain agencies and departments within the Cities and County of Napa, some of which have or will result in formal written reports and others will not. By law, these investigations are confidential and will remain so either until the Grand Jury issues a Final Report or the Superior Court releases those concerned from the bounds of confidentiality. While performing its responsibilities the Grand Jury became aware that certain witnesses appearing before it had violated the secrecy admonition applicable to its proceedings. This conduct created an atmosphere within the concerned departments which caused other witnesses to feel pressure, apprehension and intimidation, resulting in their being less than forthcoming in subsequent testimony. The witnesses' violation of the admonition of confidentiality created an atmosphere which impeded the work of the Grand Jury.

BACKGROUND

In California, unlike most other states, a grand jury has three functions: to weigh criminal charges and to determine whether indictments should be returned (Penal Code 917); to weigh allegations of misconduct against public officials and determine whether to present formal accusations requesting their removal from office (Penal Code, 922); and to act as public "watchdog" by investigating and reporting upon the affairs of local government and its subordinate agencies and commissions to determine whether those operations are being conducted efficiently and in the public interest (Penal Code 919). In the County of Napa, its annually empanelled Grand Jury primarily serves the second and third functions.

The proceedings of grand juries, whether acting in a civil or criminal function, are, by law, secret. Its proceedings are closed to the public (Penal Code, 915, 939, 939.1), and grand jurors take an oath not to disclose any evidence brought before the grand jury under penalty of misdemeanor (Penal Code, 911). Witnesses appearing before a civil grand jury, whether voluntarily or by subpoena, are also bound by the secret nature of the proceedings. At the outset of testimony, every witness is admonished not to reveal which questions were asked or what responses were given or any other matters concerning the nature or subject matter of the grand jury's investigation. (Opinion of Atty. Gen. 02-1108). The California Supreme Court has affirmed the strong historic policy of preserving grand jury secrecy (*McClatchy Newspapers v. Superior Court* (1988) 44 Cal. 3d 1162).

The justification for the secrecy requirement is that in fact, an effective “watchdog” investigation can only be conducted if witnesses are free to testify before the grand jury without fear of disclosure, recrimination, intimidation or retaliation.

The Attorney General has concluded in a persuasive public opinion (Opinion of Atty. Gen. 02-1108) that a violation of the admonition given to a witness by a grand jury, sitting in its civil watchdog capacity, may constitute contempt of court. As was stated in another opinion of the Attorney General:

A grand jury is a judicial body (citations omitted). Grand Jurors are officers of the court (citations omitted), and the jury itself is a component part to the superior court (citations omitted). The relationship and unity of the court and jury is such that contempt of the grand jury is contempt of the superior court (citations omitted). (*25 Ops. Cal. Atty. 259 (1955)*).

DISCUSSION

In following its sworn responsibilities, the 2012-2013 Grand Jury, among other things, conducted extensive investigations into the operations of several City and County agencies and departments. In connection with these investigations a number of department employees, supervisory and otherwise, were interviewed by the Grand Jury. Some were asked to bring department records with them, pursuant to the Grand Jury’s power to inspect public records.

Prior to the commencement of an interview each interviewee was given the following admonishment which has been approved by the California Attorney General:

You are admonished not to reveal to any person, except as directed by the court, which questions were asked or what responses were given or any other matters concerning the nature or subject of the grand jury’s investigation which you learned during your appearance before the grand jury, unless and until such time as a transcript (if any), or a final report, of this grand jury proceeding is made public or until authorized by this grand jury or the court to disclose such matters. A violation of this admonition is punishable as contempt of court. (Opinion of Atty. Gen. 02-1108).

Each interviewee was further asked whether he/she understood the admonition. The reply in every instance was in the affirmative.

As certain investigations progressed and in subsequent interviews of individuals, it became quite obvious to the Grand Jury that the admonition was violated. Certain individuals in City or County departments, who were sometimes interviewees themselves, were in flagrant and knowing disregard for the secrecy of the investigation and the binding nature of the admonition by pointedly interrogating co-workers about questions the Grand Jury asked, what answers they had given, who spoke about a certain subject, what records were disclosed and the like. The employees so interrogated subsequently expressed to the Grand Jury a deep concern about the conduct of these individuals, particularly when the persons so questioning served in a supervisory capacity over them. It was stated that the inappropriate conduct created an

environment of intimidation and fear of retaliation for their lawful cooperation with the Grand Jury investigation. This Grand Jury has found its investigation impeded by this contemptuous disregard of the secrecy admonition.

Though we find the evidence to be ample and compelling, this Grand Jury has chosen not to apply to the Superior Court for the issuance of a contempt citation against those persons who have willfully violated the lawful secrecy admonition of this Grand Jury. Rather, we have chosen to issue this report with its attendant recommendation, in the hope that through example and education, public officials and employees might better understand their ethical responsibilities towards the Grand Jury in its “watchdog” capacity and to the public both serve.

While violations of the secrecy admonition were not endemic throughout the various public agencies, they happened enough times to seriously impede the Grand Jury's investigations. It is clear that if a grand jury is to fulfill its statutory mandate to investigate local agencies of government, it must be able to do so in an environment where witnesses interviewed in its quest for truth are free to speak without fear, restraint or intimidation. It is only in this way that the full truth can be ascertained and the public assured of the efficacy of its government. County and citywide training of employees regarding grand jury confidentiality rules would be an important step in remedying this problem.

FINDINGS

- F1.** Certain witnesses interviewed by the Grand Jury, knowingly, repeatedly and willfully, violated their lawful secrecy admonition.
- F2.** The conduct of the witnesses in repeatedly violating the Grand Jury’s lawful secrecy admonition created an atmosphere of apprehension and intimidation which impeded the proper investigation of the Grand Jury.
- F3.** The conduct of the witnesses who violate the secrecy admonition is punishable as contempt of the Superior Court.

RECOMMENDATION

- R1.** That the County Board of Supervisors, the City Council of each incorporated jurisdiction, the County Counsel and every publicly elected official not under the authority of the foregoing provide instruction to all county employees within their jurisdiction regarding their duties and responsibilities towards the grand jury process and that said instruction be completed prior to the end to this calendar year.

REQUEST FOR RESPONSES

Pursuant to Penal Code Section 933.05, the Grand Jury requests responses from as follows:

From the following individual:

- Napa County Counsel: **R1.**

From the following governing bodies:

- Napa County Board of Supervisors: **R1.**
- Napa City Council: **R1.**
- American Canyon City Council: **R1.**
- St. Helena City Council: **R1.**
- Calistoga City Council: **R1.**
- Yountville City Council: **R1.**

From the following elected officials:

- Napa County Auditor: **R1.**
- Napa County Assessor, Recorder-County Clerk: **R1.**
- Napa County Tax Collector: **R1.**
- Napa County District Attorney: **R1.**
- Napa County Sheriff: **R1.**



A Tradition of Stewardship
A Commitment to Service

**NAPA COUNTY GRAND JURY
2012-2013**

MAY 17, 2013

FINAL REPORT

**REVIEW OF RESPONSES TO
THE 2011-2012 GRAND JURY
REPORTS**

REVIEW OF RESPONSES TO THE 2011-2012 GRAND JURY REPORTS

SUMMARY

The 2011-2012 Grand Jury issued a Consolidated Final Report in June 2012, at the end of its one-year term. The Consolidated Final Report consisted of four individual Final Reports on government agencies and departments throughout Napa County. The 2011-2012 Grand Jury requested responses to particular Findings and to all Recommendations from the appropriate agencies and officials¹. Pursuant to California Penal Code Section 933, elected officials are required to respond within sixty days of the Grand Jury's report, and government agencies are required to respond within ninety days. Their responses must be addressed to the Presiding Judge of the Napa County Superior Court.

During its present term, the 2012-2013 Grand Jury reviewed all the responses provided by the government agencies, departments and officials to the four reports written by the 2011-2012 Grand Jury. The 2012-2013 Grand Jury found that all the required responses to the Recommendations had been submitted in a timely manner.

Reorganization of the Napa County Fire Department -- 7 Recommendations:

- (3) "Not Implemented"
- (3) "Implemented"
- (1) "Further Study Required"

Measure A -- 11 Recommendations:

- (8) "Not Implemented"
- (3) "Implemented"

Napa County Jail, Napa County Juvenile Hall, and California Public Safety Realignment Act -- 4 Recommendations:

- (1) "Not Implemented"
- (3) "To Be Implemented"

¹ Grand Jury Reports are required by law to have both Findings and Recommendations. Findings are the Grand Jury's conclusions in the Report that are based on facts in the investigation. Recommendations are the Grand Jury's suggested course(s) of action or solution(s) to a given issue that logically follow from the Findings. The focus of this Report pertains solely to Recommendations.

Shooting in Alta Heights -- 8 Recommendations:

(4) "Not Implemented"

(2) "Implemented"

(2) "To Be Implemented."

Upon reviewing the responses to the 2011-2012 Grand Jury's Final Report and after further investigation, the 2012-2013 Grand Jury has provided follow-up information regarding these reports. Those observations can be found in the Discussion section.

BACKGROUND

State law requires at least one agency or official to submit a written response to the Presiding Judge for every Recommendation in a grand jury report. The current Grand Jury must assure each response was submitted within the time frame and is compliant with the requirements of the California Penal Code Section 933.

In a grand jury report, each Finding is required to be substantiated by written documents and/or oral testimony. In situations regarding taking oral testimony, such testimony must be in front of a minimum of two grand jurors to be considered. Every Recommendation in a report must be supported by at least one Finding. By adhering to these principles, the objectivity and accuracy of the report is assured. Recommendations from grand juries often suggest shortcomings and/or call for changes, and they provide an opportunity for governmental agencies to review their policies and procedures.

METHODOLOGY

The 2012-2013 Grand Jury evaluated the responses to the 2011-2012 Grand Jury's Findings and Recommendations, including follow-up interviews, to ensure compliance with requirements of the Penal Code Section 933.05 entitled "Responses to Finding."

The following criteria were considered:

- The response was received by the Presiding Judge within the statutory time frame, which included within ninety days for a public agency and within sixty days for an elected official or agency head.
- The respondent indicated either whole or in part agreement with the Finding. If there is a partial disagreement, the disputed portion of the Finding was specified and an explanation of the reason(s) was given.

- If a Recommendation was implemented, the respondent so indicated and provided a summary of the implementation action.
- If a Recommendation required further analysis, the respondent provided an explanation of the scope and parameters of an analysis of study, and a timeline for the matter to be discussed by the appropriate agency personnel.
- If the respondent indicated a Recommendation was not to be implemented because it was not warranted or reasonable, an explanation was included thereof.
- If a respondent should fail to satisfy any of the above applicable criteria, the grand jury can choose either to re-investigate, to collect further information and re-issue a report, or to decline further investigation. The 2012-2013 Grand Jury reviewed the thirty Recommendations given to the twenty-one governmental agencies in the Final Comprehensive Grand Jury Report of 2011-2012 wherever a response indicated that a Recommendation was being implemented, would be implemented, or needed further analysis by the appropriate agency.

DISCUSSION

I. REORGANIZATION OF THE NAPA COUNTY FIRE DEPARTMENT

On April 18, 2012, the Napa County Grand Jury issued a final report on reorganizing the Napa County Fire Department. The report had two major points: To hire an independent Napa County Fire Chief (NCFC) who would administer the Napa County Fire Department (NCFD) and the nine Volunteer Fire Departments, thereby effectively coordinating Napa County fire services.

To determine the cost appropriateness of the County's budget to CAL FIRE for its fire protection services by recommending a Cost Benefit Analysis (CBA).

The 2011-2012 GJ received responses to the Recommendations and relevant Findings from the following:

- Napa County Board of Supervisors
- Napa County Fire Chief
- Napa County Executive Officer
- Napa County Fire Chief Advisory Board
- Napa County Auditor-Controller

All responses were received in the required time frame. Of the seven Recommendations, three were “Implement” (43 percent), three were “Not Implement” (43 percent) and one required “Further Study” (14 percent).

Observations

The 2012-2013 Grand Jury investigated the follow-up to the Recommendations to evaluate the actions taken. It notes the following with Recommendation #1 and Recommendation #6.

R1. Napa County write a job description and employ a NCFC who will be independent and separate from CAL FIRE employment, before contracting CAL FIRE services for the agreement year 2013-2014.

The concern that prompted this Recommendation was the issue of local fire fighters, especially volunteer members, operating under their County Unit Chief, the same person who was also the CAL FIRE Chief. It was thought this weakened the commitment and attention to local services. In response, a separate employee was hired for the NCFC position. The position now focuses on all career and volunteer members of the NCFD, and the transition is proceeding in effect.

R6. Napa County complete a CBA, by an independent firm, of all the fire protection services provided by CAL FIRE and NCFD before contracting CAL FIRE services for the agreement year 2014-2015.

The Grand Jury reported that over decades the annual agreement between Napa County and CAL FIRE for fire protection, currently over eight million dollars, had never been reviewed by an independent firm. Both the NCFC and Napa County Board of Supervisors (BOS) agreed that this recommendation warranted further analysis. Subsequently, the BOS held a Fire Study Session on September 17, 2012 in which this recommendation was discussed. The BOS also committed staff to investigating relevant county expenditures and utilizing an outside firm to compare existing salaries of Napa fire personnel to those of comparable counties. The research is expected to be completed by Summer 2013 with the results to be included in the Board of Supervisors (BOS) Fall Study Session. It is likely that a Recommendation from the BOS will follow.

II. MEASURE A

On May 1, 2012, the 2011-2012 Napa County Grand Jury issued a final report on Measure A. This report dealt with the ½ percent sales tax increase passed in 1998 and imposed for a twenty-year period for flood protection. Specifically, the report dealt with improper expenditures by the City of Calistoga and the failure of the Financial Oversight

Committee (FOC) to monitor the appropriateness of the city's procurement of Measure A funds.

The 2011-2012 Napa County Grand Jury received responses to the Recommendations and relevant Findings in its Report from the following:

- Napa County Counsel
- Napa County Public Works Director
- Napa County Auditor-Controller
- Napa County Board of Supervisors/Flood Protection and Water Improvement Authority (FPWIA)
- Financial Oversight Committee (FOC)
- Calistoga City Council

The parties above submitted all the required responses in a timely manner. There were eleven Recommendations in the report, of which three responses were "Implement" (27 percent) and eight responses were "Not Implement" (63 percent). Upon review, the Grand Jury was struck by how identical the responses were from the different agencies, as if all were written by the same individual, which seems inappropriate. The Grand Jury believes the spirit of the investigative process demands thoughtful individualized responses to the Recommendations.

Observations

The 2012-2013 Grand Jury wished to determine what effectively resulted from the Recommendations by the previous Grand Jury concerning the FOC. They are as follows.

R5. Financial Oversight Committee receives the information on proposed expenditures prior to approval by the Flood Protection and Water Improvement Authority.

The Grand Jury understands that the FOC is receiving and reviewing invoice information sooner in the process.

R6. Immediate, concerted and ongoing effort to fill Financial Oversight Committee vacancies by Financial Oversight Committee and Board of Supervisors; specifically, the vacancies for representatives from:

**Board of Supervisors
Business Community
Local Media
Napa County Taxpayers
Environmental Community
Agricultural Industry**

Health and Human Services

The 2012-2013 Grand Jury notes that subsequent to the current Measure A Report being published the FOC has added 4 members, resulting in a current committee of 13. The FOC has yet to achieve the required 17 representatives as stated in the ordinance.

R10. Financial Oversight Committee establish subcommittees in order to more effectively fulfill its responsibilities under the Ordinance, namely:

- **Provide the public with information regarding the manner in which Measure A proceeds have been spent;**
- **Prepare an annual audit regarding the use of Measure A proceeds;**
- **Review the financial impact of each project and advise the public whether it is consistent with the purpose, spirit, intent and language of Measure A;**
- **Inform the public of any expenditure which is inconsistent with the purpose and intent of Measure A;**
- **Make recommendations to the Napa County Flood Control and Water Conservation District regarding proposed replacement projects if a project identified in Measure A is determined not feasible.**

The Grand Jury acknowledges that this Recommendation is in fact being followed. In February 2012, an *ad hoc* Committee from the FOC re-examined several of the Calistoga projects cited in the 2011-2012 Grand Jury Report and presented its findings to the members. Its primary focus pertained to the issue of water flow from Kimball Dam to ensure the protection of the fish population downstream.

The Committee independently concluded that Calistoga City Council's use of Measure A funds to pay for legal expenses to defend its position in reserving a portion of water from being released was inconsistent with the purpose and intent of the Measure A ordinance. In May 2013 the FOC approved the Committee's report, thereby indicating Napa County Flood Protection and Water Improvement Authority, comprised of the Napa County Board of Supervisors, improperly reimbursed about \$525,000 to the City of Calistoga.

In its Measure A Report, the previous Grand Jury described the FOC as a "sleeping watchdog". Given its effort to become more critical and independent, it seems this sobriquet might now require amending. The present Grand Jury commends the FOC for its willingness to read the report with the intention of improving its operation and making an effort to more effectively fulfill its fiduciary responsibilities to the public.

III. NAPA COUNTY JAIL, NAPA COUNTY JUVENILE HALL, AND CALIFORNIA PUBLIC SAFETY REALIGNMENT ACT

Every year the Napa County Grand Jury is mandated to investigate local jail and detention facilities in order to assure they are being administered in the best interests of county residents. Accordingly, the 2011-2012 Grand Jury issued a final report detailing its investigation of (1) Napa County Jail, (2) Napa County Juvenile Hall and (3) potential effects on Napa County Jail as a result of realignment. At the time of this report, changes under the California Department of Corrections and Rehabilitation Reorganization Plan had only recently gone into effect.

The report was published in May 2012, and it addressed Recommendations to the following individual and governing bodies:

- Napa County Executive Officer
- Napa County Probation Department
- Napa County Department of Corrections
- Napa County Board of Supervisors.

Their responses were reviewed and found to meet statutory requirements. All responsible parties agreed to implement Recommendations 1, 2 and 3.

R1. County Criminal Justice Community report each year to the citizens on how the alternative programs are working, including current information on average jail population, alternative program statistics, and recidivism rate along with the annual crime rate report.

R2. County administration continue to reach out at public forums, and solicit community input regarding jail design and location, while looking at jail expansion alternatives.

R3. The County prepare to assume greater financial responsibility for Realignment, in the event State funding is not forthcoming.

Observations

The Grand Jury will continue to investigate the condition and management of the County's jails on a yearly basis as mandated by the California Penal Code Section 919 (b).

IV. SHOOTING IN ALTA HEIGHTS

On June 15, 2012, the 2011-2012 Napa County Grand Jury issued a final report entitled Shooting in Alta Heights. It involved an Officer Involved Shooting (OIS), which resulted in the death of a Napa resident. The report did not render any opinion regarding the justification of the shooting, but rather concentrated on what suitable services should be provided for citizens in such situations.

The 2011-2012 Napa County Grand Jury received responses to the Recommendations and relevant Findings in its report from the following:

- Napa City Police Chief
- Director of Napa County Mental Health Department
- Napa County Sheriff
- St. Helena Police Chief
- Calistoga Police Chief
- Napa County Board of Supervisors
- Napa City Council
- American Canyon City Council
- Calistoga City Council
- St. Helena City Council
- Yountville City Council

The Report consisted of eight Recommendations, of which two responses were “Implement” (25 percent), four responses were “Not Implement” (50 percent) and two responses were “To Be Implemented” (25 percent). After reviewing the responses to the Recommendations, the 2012-2013 Grand Jury believes its comments are warranted regarding two main points of interest:

1. Napa Mental Health Services and Napa Law Enforcement Agencies develop coordinated services to help residents cope with the occurrence and outcome of crises that befall their communities, and
2. The suggestion that the Grand Jury act as a Civilian Review Board.

Observations

First, the 2012-2013 Grand Jury investigated what changes the Napa County law enforcement agencies and Mental Health Department brought to their procedures involving crisis intervention and traumatic incidents since the 2011-2012 Grand Jury Report. The Recommendations from that report were as written:

R4. Within 180 Days the law enforcement departments in Napa County and Mental Health Department establish more effective coordination in situations of crisis intervention by (1) engaging in joint training exercises, and by (2) maintaining instantaneous communication and patching capability.

R7- Within 180 days the Napa County Mental Health Department (1) establish support programs for communities involved in traumatic incidents, and (2) establish additional programs to promote community awareness of resources for crisis support.

Interviews and follow up research produced promising results. In fact, some developments occurred before the publication of the report, which indicates the agencies reviewed the incident and initiated changes, as one would expect of public organizations operating on a professional level. Training for mental health crisis situations between law officers and mental health department representatives is now ongoing. Additionally, there has been a joint effort to reach out to members of the community where police have discharged firearms, and the Mental Health Department continues to implement programs aimed and community awareness of the support available for mental health needs in Napa County.

Second, the 2011-2012 Grand Jury had proposed a civilian review board to provide feedback in situations involving officers using lethal force:

R5. Within one year the Napa County Board of Supervisors and all Napa County incorporated local governments establish a civilian review board to examine all investigation documents of this incident and all future Officer involved shooting (OIS) incidents to provide feedback from a civilian point of view.

In their responses several of the governmental bodies stated the since the Grand Jury is comprised of civilians who investigate for the public good, it could act as a civilian review board in OIS situations. This conclusion is erroneous for the following reasons:

1. The absence of a statute requiring Grand Jury Members to serve on a citizen review board,
2. The interruption of mandated Grand Jury duties that must be completed in a 12-month term and,
3. The lack of continuity year to year of the same members serving.

Given that the government bodies otherwise rejected this Recommendation, the Grand Jury regretfully recognizes there is no likelihood further action will be taken by the agencies regarding this issue in the near future.

Conclusion

The 2012-2013 Grand Jury recognizes the necessary time and effort undertaken by both the previous Grand Jury in creating its reports and by the public agencies in responding to

those reports. Both share a common pursuit: a commitment to improving the well-being of Napa County residents.

The 2012-2013 Grand Jury also acknowledges that a commitment to facilitating positive changes in Napa County is often an evolutionary rather than a revolutionary process; changes are likely to be completed in the long-term rather than short-term. The recommendations by a grand jury and the actions of public agencies prompted by those recommendations should not be dismissed and forgotten. It is to these ends that the 2012-2013 Napa County Grand Jury, performing its role as a voice of the people, has respectfully submitted this report.



A Tradition of Stewardship
A Commitment to Service

NAPA COUNTY GRAND JURY

2012-2013

MAY 20, 2013

FINAL REPORT

NAPA COUNTY JAIL

NAPA COUNTY JAIL: Realignment, Recidivism and Replacement

SUMMARY

As mandated by law, the Grand Jury (GJ) must complete a physical inspection of all jail facilities within the County. The 2012-2013 Napa County Grand Jury inspected the Napa County Jail (NCJ) in October 2012. The Napa County Department of Corrections (NCDC) oversees the operations of the facility and staff. The Grand Jury found the facility well maintained and managed, though the older portion of the jail facility shows considerable wear and tear. The Grand Jury found the staff well trained and performing their duties in a professional manner.

In October of 2011 the State of California implemented the 2011 Public Safety Realignment Act (AB109 and AB117), collectively termed “Realignment” which is the cornerstone of California’s solution for reducing the number of inmates in the state’s 33 prisons to 137.5 percent of design capacity by June 27, 2013, as ordered by the U.S. District Court and affirmed by the U.S. Supreme Court. This GJ Report will update the community with the first actual data on the impact of realignment. Additionally, this report will highlight programs implemented by the NCDC along with the Probation Department designed to reduce inmate recidivism. The final element of this report is intended to update the community on the Jail replacement project.

BACKGROUND

The Napa County Jail (NCJ) in downtown Napa is adjacent to the Napa County Superior Court and the Napa County Administrative Offices. Originally built in 1975, the facility was expanded in 1989 to hold a maximum of 264 male and female inmates, detainees and prisoners awaiting sentencing. Temporary beds are added, up to a maximum of 305 when capacity is exceeded.

Housing areas include:

- Temporary Holding
- Observation Cells
- Work Furlough accommodations
- General Population
- Administration Segregation
- Maximum Security

- Protective Custody
- Medical Unit
- Solitary Confinement

California Forensic Medical Group (CFMG) provides medical services to jail inmates under a contract that is renewed semi-annually. CFMG's around-the-clock services include medical, mental health and dental care for the inmates.

The NCJ is one of only two California county jails operated by a civilian corrections department as opposed to the County Sheriff. While this organizational structure is unusual in California, the 2012-13 Grand Jury did not consider it an issue for this report.

The NCDC is responsible for the coordination of all programs and services related to the institutional punishment, care, treatment, and rehabilitation of inmates including intake screening, diagnosis, classification, and programs that deal with sentencing alternatives. The NCJ is inspected annually and must meet all California guidelines and mandates for jail operations under California Penal Code Title 15 and California Penal Code Title 24.

METHODOLOGY

The Grand Jury toured the Jail in October 2012. This was followed by review of the kitchen facilities and the process by which commissary items are distributed. The inspection also included interviews with the medical staff and review of the contract and medical procedures manual used for inmate care at the jail and juvenile hall. The Grand Jury also reviewed previous GJ reports, the Napa County Performance Measurement Report, selected grievances submitted by inmates and attended several Community Correction Partnership (CCP) meetings. The intake assessment tool used by Corrections to determine the level of service necessary for the detainee (a proprietary tool termed LS/CMI) and Community Corrections Service Center and BI Inc. Program documents were also reviewed.

The jail replacement information contained in this report is supported by the Napa County Executive Office report and presentation to the Board of Supervisors on 12 November 2012. Much of the research conducted for this report comes from online sources, cited throughout the text and in the Bibliography, largely from the websites for the California Department of Corrections and Rehabilitation (www.cdcr.ca.gov) and from the Chief Probation Officers of California (www.cpoc.org). This includes the 'Dashboard' of county-by-county updates on specific Realignment data.

DISCUSSION

Realignment and Jail Population

State prison and probation are two ends of the spectrum traditionally available to judges who sentence felony offenders in California. Realignment has given the courts the additional tool of “split sentencing.” A split sentence allows a judge to split the time of a sentence between a jail term and a period of supervision by a probation officer. Felony offenders would have been overseen by State Parole officers in the past. Under Realignment this now falls to the County Probation Department.

The Napa County Community Corrections Partnership (CCP), chaired by the Chief Probation Officer, is a coalition of local law enforcement agencies, the District Attorney, the Public Defender, a Superior Court Judge, the Director of Health & Human Resources, the Napa County Office of Education, the NCDC and other *ad hoc* members who maintain an active interest in the safety of our community. Napa County’s CCP pre-dates the requirements of Penal Code Section 1230 that mandated CCPs be formed in all California counties as part of the Realignment Act of 2011. The Napa County *Public Safety Realignment and Post Release Community Supervision 2011 Implementation Plan* (CCP plan) can be accessed via a link found in the Bibliography.

AB 109 and AB 117

In October 2011, the California state Legislature implemented the Public Safety Realignment Act (AB 109 and AB117) <http://www.cdcr.ca.gov/realignment/>. These assembly bills mandate that each county will house newly convicted non-violent offenders in the county jails, and use local Probation Departments rather than the state prison/parole system. These offenders are known as “non-violent, non-serious, non-sex offenders.” In Napa County, these offenders are predominantly those convicted of DUI, drug or property offenses.

The CCP plan predicts:

During the first year, 68 new post-release community supervision cases will come out of prison, in monthly increments fluctuating between 3 and 17. During the next year, the numbers coming out of prison (53) taper off, because fewer qualifying offenders will be sent to prison; others, however, will be added from those sentenced to local custody.

The Probation Department is currently responsible for supervising approximately 2,000 adult probationers.

One of the challenges that the CCP faces is to effectively manage the number of inmates, largely due to the limited capacity (maximum of 305) of the Napa County Jail. This is accomplished by a partnership of all elements of law enforcement, including the District Attorney, Courts, NCDC, Probation and Police/Sheriff using the tools of split sentencing

and evidence-based programs shown to impact criminal behavior and recidivism. Napa County has been developing evidence-based alternatives to incarceration for several years. Several of those programs are currently in use and have assisted in controlling the jail population and hopefully reducing recidivism. Several other programs will be implemented as funds, space and staff become available. Having observed the CCP functioning as an effective team, the Grand Jury commends the CCP's efforts in providing for the near and long term benefits to our community.

The CCP Plan (see Bibliography) provides a framework for managing both the new and existing offender populations and introducing new programs and alternatives to incarceration. The approach laid out in the Plan includes four broad strategies:

- Pre-trial Release: Defendants housed in the jail awaiting trial typically constitute between 60% and 70% of the jail's population on a given day. Rather than wait in jail for their trial, some defendants may be eligible to return to the community while they wait for their court hearing, with varying levels of supervision, which may include drug testing, probation supervision, electronic monitoring and checking in at the day-reporting center.
- Alternative Sanctions/Programs for Sentenced Offenders: If appropriate, some offenders may be required to participate in education and treatment programs instead of serving time in jail. Sanctions/supervision may include electronic monitoring, home detention, work release, day reporting with or without programs, and, potentially, confinement alternatives, such as a staff-secure residential facility. The statewide realignment system refers to this as Post Release Community Supervision (PRCS).
- Alternative Probation Violation Sanctions: The Plan calls for using a matrix of sanctions and rewards, ranging from counseling through "flash incarceration" to revocation of community status.
- Post-Prison Transition Plan: To deal with the 70 or so inmates who will be released from State prison to the County Probation Department, the Plan calls for creating a multidisciplinary team to assess each offender prior to their return to the community and determine their appropriate supervision level and program needs.

In Napa County, Realignment has resulted in approximately 100 additional offenders in the criminal justice system (combining transfers from Prison and new convictions.) The jail population however has ranged between 230-290 inmates in the period since Realignment was implemented, which remains below the Jail's maximum capacity. Napa County is using split sentencing in approximately 70% of cases, which is higher than most of the other counties in California. A complete picture of the impact of Realignment, which is updated regularly, can be found via the California Chief Probation Officer's website

Crime, Punishment and Recidivism

The purpose of the Napa County Courts, NCDC and Probation Department is twofold. First, it is the duty of criminal justice system to dispense punishment to individuals who have been found guilty of committing a crime. This is straightforward and usually involves incarceration for a period of time that is followed by a probationary period.

The second purpose is much more difficult to implement in a meaningful way and to quantify. This is, simply stated, to effect permanent change in the criminal offender to the extent that they do not commit additional crimes. This is termed “recidivism.” In an ideal world, criminals who are punished would “learn their lesson” and not commit any additional offenses in which case the recidivism rate would be zero. The reality, based on data for California State Prisons, is that between 64-70 percent of inmates released will re-offend, return to and may remain in the criminal justice system indefinitely. For the period of 2007-2008, in the California Prison system 116,015 inmates were released and 73,885 returned within 3 years. Female inmates recorded a far lower rate of return: 52.9 percent, compared with 65 percent for men. The recidivism rate is variable, depending on the criteria used to define it. For example, if violation of probation resulting in re-incarceration were included, the rate would be higher than if the definition were more conservative and only a new offense/conviction would be considered recidivism. It is the understanding of this Grand Jury that in Napa County the latter, more conservative definition is employed.

In Napa County the goal of our criminal justice system is to decrease the rate of recidivism and have it remain low. Many programs are offered to inmates and PRCS offenders to help them redirect their thought patterns, substance abuse and anger management issues, for example, in order to give them the best chance for living a productive life after release from jail. Unfortunately, there is no meaningful historical data on recidivism in the Napa County jail system. The information technology/systems used to track jail bookings, convictions, release and probation have not offered a way to easily extract information on the recidivism rate. The definition that is used to determine if a former inmate should be counted will also need to be clarified. Thus, at the present time it is virtually impossible to determine if the recidivism rate is rising or falling with the lack of a historical baseline for the Napa County inmate population.

NCDC and Probation have an ongoing collaboration with a private vendor, BI Incorporated (BI), who has implemented a behavior intervention program as an adjunct to post release follow-up for selected individuals. BI, which was established in 1978, specializes in the delivery of correctional, detention and residential treatment services to federal, state, and local government agencies. BI has available a full continuum of monitoring technologies and community re-entry services for offenders, pretrial defendants and illegal aliens. The local BI Manager also sits as an *ad hoc* member on the CCP panel.

BI works closely with NCDC and Probation in the running of the BI program that is designed to cost-effectively decrease recidivism, promote public safety and strengthen

the community. This rigorous program, which the typical client will complete in 12 months or more, is designed to alter criminal thinking as well as behavior.

We presently have two discrete examples of recidivism rates in Napa County. One comes from the group that has completed the BI program. It is the understanding of the Grand Jury that since 2009-2010, of the 75 persons who completed the BI program, 18 re-offended, giving that group a recidivism rate of 24 percent. The other example comes from those individuals who are in the Napa criminal justice system as a direct result of Realignment. For these 100 individuals, who are followed quite closely, the recidivism rate to date is 22 percent (22/100).

The average cost of incarcerating an individual in our county jail is approximately \$140 per day. The BI program costs an average of approximately \$35 per day. It is apparent from the aforementioned recidivism rate that the BI program offers savings in the form of fewer inmates returning to jail. While it the BI program has a high probability of continuing success, it should be carefully monitored by NCDC and the Probation Department to ensure the program remains cost-effective.

Into the Future ...

The current jail is nearly 40 years old and is less than optimal for many reasons, including capacity. The Jail Supervisor and Staff should be commended for the continued effective operation of the current facility. The Board of Supervisors (BOS) has been considering size and location options for expanding or replacing the jail for the past several years. In 2006 the County retained CGL Companies (CGL) and the Carey Group to assist the County's Criminal Justice Committee in developing an Adult Correctional System Master Plan. The Master Plan, approved by the BOS in two phases in November 2007 and October 2008, called for the implementation of evidence-based practices designed to reduce recidivism, and construction of a new 366-bed jail, but with central services functions (kitchen, laundry, maintenance, intake) sized to accommodate up to 500 inmates. The intent was to provide enough space to meet CGL's projected 2025 bed need and allow for the cost-effective expansion of the jail beyond the 2025 bed number by adding additional housing units. Location options included downtown, out-of-downtown and the split option of two new jails, one downtown and the other in a remote location. The BOS initially approved the downtown option.

In December 2010, the BOS reviewed a *Major Facilities Preliminary Financing Plan and Feasibility Analysis* for a downtown Jail Replacement Project with an anticipated cost of \$8.9 million in current dollars and \$12.7 million in inflation-adjusted dollars. In Phase I of the project, the existing Jail and Hall of Justice would be demolished and a new 366-bed jail built immediately south of the County Administration Building. Phase II, with no identified funding source as of 2010, is the construction of an additional 134-bed facility to bring the jail capacity to 500.

The plan for a new downtown jail was revisited in 2011 due to two major factors. First,

based on community input, the choice of expanding a downtown location for a 500-bed jail was soundly unpopular. Second, with the unclear impact of realignment and the likely increase in jail population, would the facility be sufficient for future needs? It was decided to postpone the planning until the impact of realignment could be better understood. Realignment took effect in October 2011 and projections were again revised from the 2007 projections to factor in 8 months of actual experience with Realignment as well as the impact of other factors on the jail population since 2007.

This brings us to November 2012, and the new recommendation from the BOS that the County focus on a plan to build a new 366-bed jail with core facilities sized to accommodate 526 beds at a site located outside of downtown Napa. At its October 30, 2012 meeting, members of the CCP supported the new recommendation. In discussion, CCP members emphasized that the out-of-downtown site provided the most flexibility in dealing with potential future expansion needs and the changing nature of the inmate population due to Realignment, but cautioned against locating the new jail more than a 10 to 15 minute drive from downtown Napa because of the impact on law enforcement agencies that transport arrestees. The BOS granted approval of the plan in November 2012. Environmental impact reports (EIR) are being prepared for several alternative new jail locations. The preferred location is in south Napa located on the east side of Rt. 221 adjacent to, and between, the Napa State Hospital and the Syar Napa Quarry. An optimistic timeline for this project is for the EIR to be certified by the end of 2013, financing decisions completed in 2014 (anticipated cost of approximately \$100 million), design in 2015, construction 2016-2018 with opening in 2018 or later.

Implementation of a staff-secure jail inmate re-entry facility is also an integral part of the near and long term plan for NCDC and Probation, as part of Realignment and in accord with the CCP plan. A staff-secure facility is envisioned to house inmates in an apartment-like setting, offer evidence-based programs, skill development training, and provide an opportunity for individuals to go into the community for approved purposes (i.e. jobs, substance abuse prevention, classes, etc.) in a controlled way. This transitional period will help them in (re-)learning how to be productive members of their community, with the goal of not seeing them again in court. Long-term the facility will be built on the future new jail site to accommodate up to 100 beds. Locating the facility near the jail maximizes the County's resources (such as kitchen and laundry operations, building maintenance staff, etc.) and allows for swift transfers to the facility when it is time for an inmate to be released and back to the jail when problems occur. However, because the construction of a jail is still several years away, the County is pursuing a location for a temporary staff-secure (50-bed) facility on the grounds of Napa State Hospital. Discussions with the State are ongoing.

FINDINGS

- F1.** In the 18 months since implementation began, Realignment has resulted in approximately 100 additional offenders for NCDC and Probation. The impact of Realignment has been modest and effectively managed by the CCP in a coordinated effort.
- F2.** The information technology/systems used to keep records for adult criminal justice have not been used for extracting information specific to quantifying recidivism in Napa County.
- F3.** The Board of Supervisors has made the decision to construct a new jail and relocate to outside of downtown.

RECOMMENDATIONS

- R1.** It is recommended that the NCDC and Probation fully define recidivism and work with Napa County Information Technology to extract meaningful information concerning past recidivism in order to gauge the success of ongoing alternative programs. This should be implemented by 1Q2014.
- R2.** The Grand Jury recommends that every effort be made to design a state-of-the-art jail facility. It should be sufficient for current needs as well as anticipated future requirements. Emphasis should be placed on designing the jail to facilitate not only capacity, but also the logistics of medical, mental health, educational and evidence-based programs.

REQUEST FOR RESPONSES

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

From the following individuals:

- Director of NCDC: **R1**
- Chief Probation Officer: **R1**
- Chief Information Officer: **R1**

From the following governing bodies:

- Board of Supervisors: **R2**

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A Tradition of Stewardship
A Commitment to Service

NAPA COUNTY GRAND JURY

2012-2013

MAY 20, 2013

FINAL REPORT

NAPA COUNTY JUVENILE HALL

NAPA COUNTY JUVENILE HALL

SUMMARY

As prescribed by law, the 2012-2013 Grand Jury has completed its annual inspection and review of the Napa County Juvenile Hall (NCJH). The current NCJH facility, constructed in 2004, began operation in 2005. The Grand Jury found the facility clean, well maintained and secure. The Chief Probation Officer serves as Director of NCJH and has held this position since 2002.

Various members of the staff participated in the interview and inspection. The facility and programs are all designed to engage and rehabilitate youth. The staff is knowledgeable and maintains both discipline and a strict regimen of activities. The juveniles are treated with respect for their privacy as prescribed by law pertaining to juveniles.

This report also will address progress that has been achieved in decreasing the numbers of youth offenders and those on Probation.

BACKGROUND

The NCJH facility was built in 2004 as a state-of-the-art detention and rehabilitation center and was designed to house up to 50 juveniles, supervised by 27 permanent staff assisted by additional part time staff members. The Napa County Probation Department oversees the operation of NCJH. The Chief Probation Officer serves as its Director and is responsible for the overall operation of NCJH.

NCJH provides for juvenile detention and rehabilitation providing custody, counseling, medical care, and guidance of delinquent and custodial juveniles in a variety of what NCJH refers to as “evidence-based” programs. It is very difficult to assess the performance of Juvenile Hall without also integrating the role of Probation in the rehabilitation process as it is intended to provide a smooth transition from the Hall to becoming a law-abiding citizen once back in the community. Juvenile probation oversight delivers various levels of individual supervision that are based on protection of the community, risk/needs assessments, out-of-home placements, and amenability to rehabilitation. Juvenile Hall supervisors collaborate with the Napa County Health and Human Services Department in the supervision of selected cases wherein mental health issues are a major factor. The supervisors also collaborate with other community and government agencies such as Juvenile Drug Court, Wolfe Center and Aldea Inc. Detainees receive treatment including mental health evaluations and services provided by a full-time mental health professional. General nursing care is provided seven days per week.

METHODOLOGY

The 2012-2013 Grand Jury conducted the annual inspection of Juvenile Hall on October 30, 2012. Several supervisors of Juvenile Hall participated in the tour and informally responded to questions and clarifications posed by the Grand Jury at that time. Subsequently, multiple members of the counseling staff were interviewed.

Documents reviewed include the Napa County Evening Reporting Center Annual Report, July 2012 and previous Grand Jury reports. The Grand Jury also reviewed the inspection report issued after the March, 2012 inspection by the Board of State and Community Corrections to determine whether or not the NCJH is in compliance with Title 15 and Title 24 of the California Code of Regulations (CCR), Minimum Standards for Juvenile Facilities and the Federal Office of Juvenile Justice and Delinquency Prevention standards for holding minors.

DISCUSSION

The Napa County criminal justice system, spearheaded by the Probation Department, has implemented programs to improve outcomes for youth offenders since traditional correctional services, such as “scared straight” were not yielding desired results. Evidence-based practices and programs describe the methods and strategies that have proven effective in the specific goal of reducing recidivism. Based on eight guiding principles for risk/recidivism reduction, this approach includes: assessing actuarial risk through risk/need assessments, enhancing intrinsic motivation, targeting intervention skill training with directed practice, increasing positive reinforcement and engaging ongoing support in communities.

Although several evidence-based programs were implemented post-release, it became apparent that additional resources were needed to provide youth services during high risk times of the day to reduce recidivism and create positive, lasting behavior change in the lives of youth. Much of the juvenile crime occurs during the hours after school and before parents return home from work. The hours of 3 pm to 7 pm were identified as times that youths need activities and skill building to help change their behavior. Thus, in 2009 the Napa County Evening Reporting Center (ERC) was established to fill this important gap in juvenile services. The overall goals of the ERC are to reduce costs; reduce juvenile hall population; target chronic criminal behavior and thinking; create a positive environment for ex-offenders; support the efforts of the entire justice system; and help youth develop skills and positive connections that will prevent them from becoming inmates of the adult corrections system and help transform them into productive citizens. There are enormous cost savings associated with these activities.

The fruits of these efforts are borne out by the data over the last 3-4 years. In 2009, when the ERC opened there were 736 youth on probation, the average daily population of NCJH was 44 and the average length of stay was 42 days. In 2011 there were 431 active wards of the court, down from 536 in 2010 following the programs’ inception in 2009. As of July 2012 that number is down to 261 active wards of the court, which represents an impressive reduction in the number of youth under the scrutiny of the Juvenile Probation Dept. Further, the average number of youth at NCJH decreased from 44 in 2009 to the current 27 and the average length of stay decreased from 42 days to 18 in FY 2011/2012.

The Grand Jury notes that the inspection report issued by the Board of State and Community Corrections found that the NCJH is 100 percent in compliance with all standards and regulations.

This report was based on a walk-through of the physical plant, a review of written policy and procedures, and a review of documentation to verify that practice follows policy. In addition the report reflects findings based on interviews with youth, counselors and health care staff.

FINDINGS

- F1.** The NCJH provides a secure and progressive environment for offending Napa County youths.
- F2.** The staff displays a high level of professionalism and dedication to the youth in their charge.
- F3.** In addition to mandated appropriate education, evidence-based programs are implemented to provide intensive and targeted attention to the highest risk offenders. These programs are designed to help offenders with issues such as anger management, substance abuse, and criminal thinking; and to promote alternative positive behaviors.
- F4.** The NCJH is in compliance with all state and federal standards and regulations.

COMMENDATION

The Grand Jury commends the entire staff of the NCJH for their high level of professionalism and sincere commitment to serving the youth of Napa County.



A Tradition of Stewardship
A Commitment to Service

NAPA COUNTY GRAND JURY

2012-2013

MAY 20, 2013

FINAL REPORT

NAPA COUNTY SHERIFF/CORONER- SERVICES OPERATIONS

NAPA COUNTY SHERIFF/CORONER SERVICES OPERATIONS

SUMMARY

The 2012-2013 Napa County Grand Jury, prompted by the lack of any apparent previous investigation of the Coroner and Services Divisions of the Napa Sheriff's Office (NSO), began an investigation of the Napa County morgue and Coroner's operations. With imaginings of a cold dark odiferous setting quickly dispelled, we discovered a bright, clean and exceptionally well-equipped facility staffed with caring professionals. Napa County's autopsy facility is considered state-of-the-art partly because of its on-site X-ray equipment. It is primarily this equipment that accounts for a small amount of activity from neighboring counties. In-house X-rays offer substantial savings in both time and money making the transportation to and from Napa worthwhile. The Coroner's office performs autopsies for Marin and other counties just a few times per year. A reasonable fee is charged for services.

In Napa, direct supervision of the Coroner's office staff falls under the NSO Services Division. In addition to the Coroner's office, the Services Division oversees a number of related support groups including the Technical Services/Records section, Evidence/Fingerprint (CSI) Laboratory, and Property/Evidence Room. The Grand Jury also reviewed operations in these sections in order to provide the citizens of Napa County a larger view of the often overlooked support arm of the NSO.

We are pleased to report that only minor issues were discovered. All NSO staff who were interviewed were cooperative and eager to express their high level of morale and job satisfaction. The Grand Jury congratulates the entire NSO Services Division and Coroner's staff and management for their excellence in service. The Grand Jury was singularly impressed with the culture of individual responsibility we observed during this investigation.

BACKGROUND

The Coroner's Division of the NSO was selected for investigation by the 2012-2013 Napa County Grand Jury after a report by the 2011-2012 Marin County Grand Jury reported on its use of Napa County's state-of-the-art morgue. In combination with the investigation of the Coroner's Division, the Grand Jury also reviewed the Sheriff's Services Division which includes Technical Services (Civil Services/Records), the CSI Evidence Lab, and the Property/Evidence Room.

Time constraints prevented the Grand Jury from reviewing the Court Services (courtroom bailiffs and prisoner transport) provided by the NSO as well as the services of a Sheriff's Lieutenant provided to the Department of Corrections (Jail), all of which are part of the Sheriff's Services Division.

The Grand Jury found no record of any previous Grand Jury investigation specific to the Coroner's Office or the Services Division of the Sheriff's Office. Recent Grand Jury investigations of other NSO operations include a report on Animal Services (see 2010-2011 Final Grand Jury Report) and the Napa Special Investigations Bureau (see 2009-2010 Final Grand Jury Report).

Organization/Mission and Philosophy

In 2005 the Napa County Sheriff/Coroner Offices moved from the Hall of Justice in downtown Napa to a new facility on Airport Boulevard in southern Napa. Eight years later the building is still a state-of-the-art facility. The facility supports 104 sworn officers and approximately 41 civilian support staff. The Sheriff's Office is organized in two main divisions: Field Operations and the Services (Civil/Coroner) Division. The Sheriff and Undersheriff, supported by an Administrative Services Manager and an Administrative Secretary, serve as executive oversight. One additional captain serves as Chief of Police for the City of American Canyon under their contract with the NSO for law enforcement services.

Mission Statement

The Napa County Sheriff's Office is committed to providing the highest level of professional services to our community, while fostering partnerships based on trust and respect.

The philosophy and culture of the department, as explained to the Grand Jury, is based first on providing service to the public and secondarily on law enforcement. Napa County has a low crime rate and law enforcement officers enjoy a relatively peaceful work environment in comparison to some surrounding counties. In an effort to keep crime low and enhance the quality of life in Napa County the NSO has instituted the *Problem-Oriented Policing Program*, *Shop with a Cop*, and *Napa Valley Crime Stoppers* (Appendix A) and many other activities intended to foster community awareness and symbiotic relationships. Additional NSO activities are described on the NSO website at www.countyofnapa.org/sheriff/.

The Napa County Budget Performance Measurement Report, Fiscal Year 2011/2012, pages 187 to 191 (Appendix B) provides statistical analysis and comparison of criminal activity in Napa County and several comparable counties in California. The report is available through the Napa County Executive office or may be accessed from the Napa County website at: www.countyofnapa.org.

NSO Budget

The NSO operated at a net cost (funds paid directly from Napa County) of \$10.9 million for fiscal year (FY) 2011/2012. The fiscal year 2012/2013 net cost is estimated at \$11 million. The County of Napa *Budget Performance Management Report, Fiscal Year 2011/2012*, page 224 summarizes the NSO budget as follows:

	Actual FY 2010/2011	Final FY 2011/2012	Recommended FY 2012-2013	Variance	% Change
Appropriations	22,744,885	23,336,524	24,152,270	815,746	3
Revenue	11,917,367	12,486,625	13,110,597	623,972	5
Net Cost	10,827,519	10,849,899	11,041,673	191,774	2

The term “Appropriations” as used in the Napa County Budget refers to total department expenses that are drawn from various funding sources.

Revenues (or Income) from several sources generate operating funds. A large source of funding is Proposition 172 funds (\$4,229,109 in 2011-12), a state-wide ½ percent sales tax, annual contract services to American Canyon (\$4.9 million), Yountville (\$834,000) and the Napa County Office of Education (\$190,000) together with fees for private and charitable events where the Sheriff is requested to assist with security. Fines, forfeitures and penalties (\$50,336), other state and federal funds and fees for civil process and other services make up the remainder of the NSO revenue sources. The NSO Coroner Division also receives a small amount of revenue for rental of a surgical suite in the morgue by a tissue bank and use of the autopsy suite by other counties.

The difference between the Appropriations and Revenue is the “Net Cost” which is paid directly from Napa County general funds.

It is not surprising that the largest cost of running the NSO is the salaries and benefits for the men and women working both on the streets and at headquarters. Salaries and benefits budgeted for FY 2012/2013 account for approximately 77.8 percent of the total appropriations (expenses) for the NSO.

Salaries and benefits, determined through collective bargaining, for FY 2012/2013 are estimated at \$19,656,894. The remaining appropriations, categorized as Services and Supplies, amounts to \$5,604,266. The largest, non-salary expenditures include the NSO’s share of the Napa Police Department dispatch center (\$2,040,000), travel and mileage expenses including fuel for all patrol vehicles (\$1,055,373) and IT services (\$779,634).

The largest increased expense anticipated in FY 2012/2013 is vehicle maintenance which grew from \$31,152 in FY 2011/2012 to \$205,000 this fiscal year. The added expense results from the Ford Motor Company’s decision to discontinue production of the Crown Victoria. Replacement models are smaller, have less interior dashboard space and will

not allow the NSO to re-use much of the equipment that is routinely installed, both externally and internally, on the patrol cars. New equipment and installation brackets will need to be purchased as the old Crown Vics wear out and new patrol cars are rolled out on streets.

Additional budget information is provided in the *Napa County Adopted Budget, Fiscal Year 2012/2013*, pages A112 through A117 (Appendix C). Napa County is one of two counties in California with a jail that is not supervised by the Sheriff. The Grand Jury was unable to compare the NSO budget to Sheriff's budgets in similar counties because of the inclusion of jail facilities and differences in accounting and budget practices in other counties.

METHODOLOGY

The Grand Jury conducted 24 interviews with staff and administrators from the NSO and other county agencies and visited the NSO and Coroner's facilities on Airport Boulevard on 3 separate occasions. Written policies and procedures currently in use by the NSO Services Division and Coroner's Office were reviewed together with various several other documents including:

- Contracts between the NSO and American Canyon, Yountville, City of Napa and Napa County Office of Education for law enforcement and animal control services
- Agreements with the forensic pathologist, tissue bank and Tulocay Mortuary
- 2012/2013 Napa County Budget
- Napa County Budget Performance Measurement Report, Fiscal Year 2012/2013
- NSO 2011 Year-end Report
- NSO Allocation Chart dated October 2012
- Proposition 172 information spreadsheet and trend analysis
- Problem-Oriented Policing Program pamphlet and Hunter Education program pamphlet

DISCUSSION

I. Coroner's Office/Morgue

Duties and Responsibilities

Tasked with determining the time and cause of unattended, violent or suspicious deaths in Napa County, this division utilizes state-of-the-art technology and equipment together with personnel who are highly skilled and trained in this specialized area. The Coroner's Office is staffed with two specifically assigned Coroner Investigators, a medical secretary, a contract forensic pathologist, and two part-time forensic autopsy technicians. The Coroner's Office works not only in the unincorporated area, but within every jurisdiction in Napa County including the Cities of Napa, American Canyon, St. Helena and Calistoga. Every Sheriff's Deputy in Napa County is also considered a deputy coroner; however, only those specifically assigned to the Coroner Investigator position received specialized training and work full-time as Coroner Investigators. Appendix D, a page from the NSO *2011 Year-end Report*, provides some general information on the Coroner's Office.

Coroner Investigators

Coroner Investigators are responsible for locating and notifying next of kin and securing the residence and/or property of a deceased individual when applicable. Certain items of personal property including jewelry, cash or other valuables, when appropriate, may be cataloged and taken to the Sheriff's Office for safekeeping.

The deputies assigned as Coroner Investigators receive specialized training through formal course work and practical experience. Deputies who accept an assignment as Coroner Investigator are routinely rotated back into field operations after 3 to 5 years due in part to the stressful nature of their duties. The rotation of this duty also provides the department with field officers who possess the knowledge and experience necessary to properly secure the site of a death or homicide prior to the arrival of a formally assigned Coroner Investigator. Experienced deputies share their knowledge with other field officers further enhancing the department's efficiency.

Forensic Pathologist

Beginning in January 2011 the NSO contracted for the services of a forensic pathologist who serves both Napa and Marin Counties under separate contracts. The duties of the pathologist include all autopsy services: reviewing medical records, dissection and examination of remains, ordering toxicology and other tests, recording the autopsy findings and, when necessary, testifying in Court proceedings.

Written NSO Coroner Procedures set forth the criteria for autopsies as follows:

- a. When conducting a medical history or external examination determines that an autopsy is necessary.
- b. Whenever foul play or criminal activity is suspected to be involved in affecting death, including the death of a fetus.
- c. The death is suspected to be the result of Sudden Infant Death Syndrome (SIDS).
- d. Vehicle accidents under the following circumstances:
 - (1) Autopsy the driver
 - (2) Any passengers or pedestrians – may be external review by a pathologist
 - (3) Upon valid request by law enforcement.
- e. Industrial accidents resulting in death.
- f. “Found” cases in which the decedent died alone and there is no medical history known.
- g. All decomposed bodies.
- h. Therapeutic misadventure unless substantiated with extensive medical documentation.

Pursuant to the terms of a January 2011 contract, the pathologist receives a fixed monthly fee of \$10,000 per month. Should more than 120 autopsies be required in a fiscal year the contract calls for the payment of an additional \$1,000 per autopsy. Over the past few years, the Coroner’s Office has averaged fewer than 100 autopsies per year. In 2012 there were 85 autopsies, 45 medical record reviews (not requiring autopsy) and 20 external examinations with toxicology tests.

The Grand Jury observes that Napa County is very fortunate to have the services of this very well qualified and conscientious forensic physician.

The pathologist, though not based in Napa County, is available by telephone 24 hours per day, seven days per week. The doctor is able, in most cases, to travel to Napa to perform autopsies on short notice and is normally in Napa once or twice per week. He is contractually obligated to provide a qualified substitute should he be absent or unavailable.

Because the contract pathologist is a solo practitioner, the Grand Jury inquired as to how the Coroner’s Office would handle a sudden or unexpected loss of the doctor’s services. The NSO acknowledges that there is a nationwide shortage of qualified forensic

pathologists and the replacement of the current contractor would likely require a nationwide recruitment effort. An interim measure may require the use of a previous contractor.

Coroner's Facilities (The Morgue)

The Grand Jury was first drawn to the subject of the Napa County morgue following the publication of the 2011-2012 Marin County Grand Jury Report concerning that county's lack of a formal Coroner's facility. The Marin County report indicated an agreement with Napa for the performance of certain autopsies. During this investigation, the Napa County Grand Jury learned that Marin does in fact utilize the NSO Coroner's facilities for autopsies a few times per year. Marin pays an average of \$1,250 for an autopsy with X-rays. Most, if not all, of the cases brought to Napa from Marin require X-rays and Napa's in-house X-ray capability is the primary reason for other counties to bring remains to Napa for a full autopsy. Marin continues to utilize a funeral home to perform the majority of its autopsies, a practice that was utilized by Napa County prior to the building of the facility on Airport Boulevard in 2005.

The Airport Boulevard Coroner's facility is still considered state-of-the-art some 8 years after opening. The autopsy suite is equipped with X-ray equipment, video and photographic equipment, a microphone that allows the forensic pathologist to dictate notes during an autopsy procedure, and a glass viewing area that avoids cross-contamination issues while allowing investigators a close up view of autopsy proceedings. Coroner Investigators are routinely present in the autopsy room during procedures to photograph and document autopsy findings. Forensic autopsy technicians are responsible for cleaning the room both before and after an autopsy. Judging from the Grand Jury's observation of the room, they are meticulous in their work.

Coroner's Records

Coroner's reports and records, until recently, were recorded in a computerized system separately from other NSO records. The NSO and Napa County Information Services recently began a migration of Coroner's records into a program called iLeads which is shared by the entire NSO. The previous system became obsolete as new and improved software and technology came into the market and began conflicting with the older software. The system was overloaded with data and became unusable. iLeads will allow criminal investigators to quickly access Coroner's records.

The Grand Jury also learned that a system of typewritten index cards, dating back to the 1950's, continues to be updated and utilized in the Coroner's Office despite the availability of powerful computer data entry and retrieval systems. The Grand Jury believes that creating new typewritten index cards for inclusion in the old system is redundant and a waste of staff's time. We recommend that staff instead use that time to enter the information from the old index card system into the electronic system so that all Coroner's case records eventually become retrievable from a single database.

II. Technical Services/Records Section

This Technical Services/Records section (Records section) of the NSO is responsible for a wide variety of tasks:

- Storage, retrieval and management of all official NSO reports, records and statistical information
- Sexual offender/Drug offender/Arson offender registration
- LiveScan fingerprinting
- Processing of concealed weapons permits
- Processing of arrest warrants
- Processing booking records
- Processing NSO reports
- Misdemeanor and Infraction citations
- Civil Process including services of summons and complaints, levies, writs, evictions, restraining orders and other notices and court orders

Recordkeeping and Daily Duties

The Records section manages all official NSO reports and records together with all Napa County booking records and arrest warrants. Records section staff also report statistical data to state and federal agencies. The Records section is staffed by approximately 8 to 10 legal clerks and two supervisors and is in operation 24 hours a day, 365 days a year. Two staff members are generally assigned to handling warrants and writs while the remaining staff members work with the public, assist field officers and process reports. Daily public interaction for Records section staff includes LiveScan fingerprinting services which take place by appointment every 15 minutes between 8 and 5 during weekdays, vehicle impound releases, concealed weapon permit applications, registration for narcotic, sex and arson offenders, record requests and other items.

Sorry, Cash or Check Only

The Grand Jury learned that Records section staff members are unable to accept credit or ATM cards and this creates an inconvenience for the public. The NSO charges a low “roll” fee for LiveScan fingerprinting which makes it a popular option to higher priced commercially owned LiveScan services in the Napa area. The roll fee, however, is only a part of the total LiveScan fee which is determined by the type of activity (i.e., notary public, non-profit volunteer, etc.) and by the agency processing and/or recording the

prints. The unpredictability of the final cost becomes an issue for citizens who bring too little cash or do not have their checkbook requiring either a second trip to Airport Boulevard and/or a visit to nearest bank. A previous plan to accept credit/ATM cards was rejected due to related costs. The Grand Jury believes this should not be an insurmountable issue since other local governmental agencies now accept credit and debit cards through third party contractors whose fees are passed directly to the customer. The Grand Jury encourages the NSO and the Napa County Board of Supervisors (BOS) to locate and contract with a third party credit card merchant service such as those utilized by the Napa County Tax Collector and the Napa County Clerk.

Civil Process

Civil process requests include the service of summons and complaints in civil lawsuits; Small Claims documents; restraining orders; civil warrants; eviction notices and other court orders. NSO deputies are assigned the task of personal service. Writs and levies on bank accounts, business property, vehicles and other assets of a judgment debtor are also executed by Records section staff. Supervising officers oversee planning and logistics in complex cases such as the seizure of a grape crop, unbottled wine, livestock or other non-monetary property. The NSO is often responsible for the movement, storage and, at times, the sale at auction of a wide variety of property.

Probation Information

Field officers receive support from Records clerks who verify that information on probation terms and warrants are current. The Grand Jury learned that there was a recent information gap between the Probation Department and the NSO. Over one year ago the Probation Department stopped a long-standing practice of providing the NSO with monthly lists of probationers in Napa County reasoning that the lists became obsolete because of the constantly changing probation terms. Those changes were unknown to NSO staff until the next monthly list was issued. Interim changes in probation terms and status may have caused field officers to detain and/or search individuals who were no longer subject to probationary search and seizure.

A new 24-hour phone line is now in place that allows the NSO and other law enforcement agencies in Napa County to seek live information from the Probation Department when questions arise related to individuals subject to probation.

III. Evidence/Fingerprint (CSI) Lab

The NSO Evidence Lab is staffed by two experienced, well-trained and FBI certified Evidence Specialists and one Evidence Technician. Fortunately for the citizens of Napa, these “CSIs” are not often found processing murder scenes as depicted on popular television shows, but they are certainly well trained to do so.

The NSO lab is primarily a “fingerprint” lab. Evidence collected by NSO deputies and/or lab staff is processed for fingerprints which are photographed and compared to the prints

of known suspects and/or electronic databases such as the Automated Fingerprint Identification System (AFIS). In cases involving John Doe victims, evidence specialists collect and analyze the victim's fingerprints for identification. The NSO lab staff's expert work is not always limited to Napa County as evidenced by their recent work with the Fairfield PD to successfully identify a young homicide victim.

Lab workers also collect digital camera memory sticks loaded with photos taken by deputies. It is their job to copy the photos onto duplicate CDs which are stored separately from other evidence. The system of storing crime scene photos on CDs is less than optimal and more advanced storage systems are available. CDs are subject to damage and may be lost or misfiled. The shelf life of a CD is also in question. A secure server with state-of-the-art photo management software and an appropriate back-up system would enhance not only the storage of photos but would also speed the retrieval and copying process. The NSO is encouraged to continue its work with County IT to budget and set up a secure computerized photo management system for crime scene photographs.

Though collected and indexed by NSO staff, blood and DNA evidence is not processed at the NSO lab. All ballistics, toxicology, DNA and blood evidence is sent either to the Department of Justice in Santa Rosa or Sacramento or to specialized private forensic laboratories. Specialized forensic testing equipment is very expensive and Napa County is fortunate that our low crime rate does not justify the expense of purchasing and maintaining this equipment at the NSO.

The Grand Jury understands that the laboratory staff has received excellent training and is very familiar with the proper methods of handling DNA samples. However, we found the section of the policies and procedures relating to the collection and preservation of DNA evidence to be insufficient in that it consists solely of pages taken from the *Journal of Forensic Identification*, Vol.41, No.5 dated Sept/Oct 1991, which indicates the information is more than 20 years old. The purpose of written policies and procedures is to ensure consistency and provide guidance to all NSO staff on proper protocols. The Grand Jury recommends the immediate development of a proper policy and procedure for DNA sampling and handling.

IV. Property/Evidence Room

The Property Room is presently staffed by two very experienced civilian members of the NSO. The volume of work and recent staff absences has required the part-time use of an Evidence Lab technician in the Property Room. Property Room staff manages storage of criminal evidence, found items and property taken for safekeeping. They are responsible for the secure storage and eventual removal or destruction of property and evidence under clear NSO policies and procedures. As a matter of policy the NSO uses redundancies in paper and computer records to avoid evidence tampering or theft.

The Grand Jury visited the Property Room on two separate occasions in the presence of an NSO officer and staff member. We observed a large amount of property that was

bagged or boxed as well as many bulky items that were neatly shelved. It appeared the Property Room was quite full with little room for new evidence to be properly housed. Also observed were a fair number of items either left out on a table or on the floor.

The Grand Jury found the Property Room staff to be competent and conscientious. Policies and procedures are clear and appear to be carefully followed. The staff members are all long-term employees who are known among their colleagues for their integrity.

As the Property Room fills with evidence, it falls to the staff to identify and process for removal any items that can be returned, sold or destroyed. Evidence related to murder and sex crimes must remain securely housed indefinitely. The vast majority of evidence at the NSO, however, relates to less serious crimes. The destruction of evidence following the adjudication or dismissal of a criminal matter requires a Court Order. The Napa County District Attorney's office (DA) is also required to approve any such destruction.

The Grand Jury learned through testimony that the process to obtain Court approval for destruction had been slowed because the NSO was not receiving responses from the DA. Our investigation revealed that the DA was most recently provided a list that included approximately 150 adult and juvenile cases. The list lacked sufficient information in many cases for the DA to make a knowledgeable assessment. Additionally, that fact coupled with the mix of adult and juvenile cases and the large volume of case names and numbers, was slowing the DA's response to the NSO.

The efficient operation of the NSO Property Room is, in part, dependent upon its staff being able to purge items of no further use. It benefits the NSO, the DA and the citizens of Napa County to have a Property Room that is capable of efficiently housing and retrieving evidence in criminal matters. The Grand Jury sees a definite need for the NSO and DA to work together in the development of streamlined, written procedure that will allow the DA to quickly research and either approve or deny the destruction order request, while allowing NSO staff to efficiently purge evidence that is no longer useful.

The Grand Jury also believes that the Property Room is understaffed. It is understood that the NSO utilizes the services of officers on restricted duty and a member of the Evidence Lab to assist staff. The Grand Jury finds that the addition of at least a part-time staff member dedicated to the Property Room will enhance efficiency and avoid backlogs in indexing and securely storing new evidence as well as purging the old.

FINDINGS

- F1.** The Sheriff's Office has a flexible policy of rotating sworn officers through various duty positions to provide cross-training and enrich the experiences of deputies.
- F2.** The Coroner's office performs autopsies for surrounding counties on an as-needed basis and bills those counties for services.

- F3.** The Coroner's office and autopsy facilities, eight years after being built, are still considered state-of-the-art.
- F4.** The Coroner's office staff uses a typewritten index card for each Coroner's case which is redundant with the computerized system currently in use.
- F5.** The Records section is unable to accept credit/debit card payment for fees associated with LiveScan services, copies of reports, or other services to the public.
- F6.** The Evidence Laboratory currently stores all crime scene photographs taken by deputies on CDs.
- F7.** The Grand Jury found that the NSO has no written standard operating procedure that appropriately describes the proper manner of collection and preservation of DNA.
- F8.** The Property (Evidence) Room becomes overloaded periodically and court orders for destruction of evidence related to closed or dismissed cases have been impeded due to a lack of coordinated inter-departmental procedure.
- F9.** The Property (Evidence) Room is understaffed and is currently utilizing a person from the Evidence Laboratory to fill the gap in staffing.

RECOMMENDATIONS

The Napa County Grand Jury makes the following recommendations:

- R1.** The Coroner's Division immediately begin a program of entering data from the old system of typewritten index cards into the current computerized system.
- R2.** The NSO seek assistance, as appropriate, from the BOS, the Napa County Executive Office, and/or County Counsel to secure an agreement with a third party credit/debit card merchant service to allow the NSO to accept credit and debit cards for payment of fees and services and pass related costs to the customer.
- R3.** The NSO, County IT and the NSO budget analyst work together to develop a cost-benefit analysis for a secure server with state-of-the-art software to store, index, manage and retrieve crime-scene photographs that are now routinely stored on CDs.
- R4.** The NSO develop full documentation of policy and procedures for the collection and preservation of DNA evidence. This documentation should include the currently used standard operation procedures for handling DNA evidence.
- R5.** That no later than December 31, 2013, the NSO and District Attorney's office develop a joint policy and procedure which effectively obtains and enforces proper court orders for appropriate destruction of evidence in NSO custody in cases either fully adjudicated, dismissed or beyond the statute of limitations.
- R6.** That within the 2013-2014 fiscal year the NSO hire a part-time or extra-help person to fully staff the Property (Evidence) Room.

COMMENDATION

- The Grand Jury wishes to commend the Sheriff of Napa County and his supervisors who collectively maintain a culture of support, mentoring and cross-training of deputies, enriching the experience of both sworn and civilian staff members and supporting staff with opportunities for professional development. Staff attitudes reflect good leadership and the Grand Jury observed an excellent level of morale, pride in service and personal responsibility among the staff.

REQUEST FOR RESPONSES

Pursuant to Penal code section 933.05, the grand jury requests responses as follows:

From the following governing bodies:

- Napa County Sheriff's Office: All Recommendations **R1** through **R6**.
- Napa County District Attorney: **R5**.

APPENDICES ATTACHED:

APPENDIX A

Napa County Sheriff's Office 2011 Year-End Report, page 14.

APPENDIX B

The Napa County Budget Performance Measurement Report, Fiscal Year 2011/2012, pages 187 to 195.

APPENDIX C

Napa County Adopted Budget, Fiscal Year 2012/2013, pages A112 through A117.

APPENDIX D

Napa County Sheriff's Office 2011 Year-End Report, page 29.

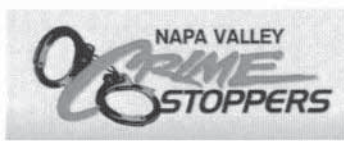
Problem Oriented Policing Program (POPP)

The mission of the Napa County Sheriff's Office Problem Oriented Policing Program is to employ non-traditional police methods, in collaboration with our partners within the local community, to address those issues that affect the quality of life of the citizens of the unincorporated areas of Napa County. Our partners include: Environmental Health, Planning Department, Code Enforcement, homeless advocates, and the Humane Society. There are two deputies assigned full time to this program, Jon Thompson and Craig Wong, and they achieved the following in 2011:

- Continued with our monthly "Coffee with the Cops" community meetings.
- Increase in the number of residents attending our monthly "Coffee with the Cops" meetings.
- Worked with County Counsel in cleaning up, and redefining, the Social Host Ordinance. Including, attending patrol briefings to explain the procedures.
- Established a Neighborhood Watch Program on Milton Road, which led to the creation of "Resident" stickers identifying the resident's vehicles. This enables deputies patrolling the area to know which cars belong in the area.
- Participated in several events including: Angwin Open House, National Night Out, Yountville Safety Fair, and Shop with a Cop.
- Moore's landing clean up completed.
- Assisted Napa Special Investigations Bureau with the eradication of several thousand marijuana plants and service of numerous search warrants.

"Shop with a Cop"

In December, deputies participated in 'Shop with a Cop'. The event is a partnership between Target, local law enforcement, high school students, city and county employees, Salvation Army, and Kiwanis Club of Greater Napa. 42 children arrived with a list of what they wanted to buy for their family, were given a set dollar amount to spend, and went shopping with their deputy. The children were also given a gift card to buy something for themselves. Another 20 children had items delivered to their homes.



Napa Valley Crime Stoppers

Law enforcement cannot solve many crimes on their own. Crime Stoppers recognizes that someone other than criminals may have information about crime, and was developed to combat the public's fear of reprisals, public apathy, and a reluctance to get involved. The program provides anonymity (callers are given a code number instead of being asked for their name, and calls are not traced or recorded) and pays rewards when their information leads to an arrest and/or conviction.

- Crime Stoppers is run by the community and the Napa County Sheriff's Office provides assistance in an advisory capacity. A board of directors has been elected and the program has received its' not for profit status through the State of California.
- A website and Tip Line were established - Leading to the Capture of over 20 wanted felons (The first of which was an arrest made by POPP Deputies)
- A Crime Stoppers tip led to the identification of the suspect who robbed the US Bank (in American Canyon) after the suspect's picture appeared on the website and in local papers.

Functional Area: Law/Justice and Public Safety
COMMUNITY INDICATORS

TITLE OF INDICATOR

Crime Count and Crime Rate

WHAT IS THE MEASURE?

Crime counts are a summation of crimes reported to local law enforcement agencies. They include misdemeanor and felony reports, but not infractions like traffic violations. Reported crimes are counted regardless of whether the criminal was apprehended or identified. This data includes crimes committed by both juveniles and adults.

The crime rate is the number of crimes committed per 100,000 people, and includes both violent and property crimes.

The data shown below is from the California Crime Index.

WHY IS IT IMPORTANT?

Crime rate data can be used to determine whether the amount of crime in a given area is increasing or decreasing and to show how crime rates in Napa County compare to the state average. Crime counts and crime rates can be an indication of how safe a community is. While it is often difficult to predict when or where a crime will be committed, individuals and communities can help with prevention by taking note of patterns and trends collected by legitimate agencies.

Crime rates could rise and fall with increasing or decreasing incidence of crime, but rates can also change if more or fewer crimes are reported to local law enforcement agencies or if the population changes significantly. Population growth is incorporated into this data. Therefore, careful analysis is needed when evaluating change in crime rates.

HOW ARE WE DOING

After a slight decline between 1999 and 2001, property crimes in Napa County has fluctuated. The number of reported burglaries decreased by 52 (6.8%) in 2009. Napa County maintains a property crime rate significantly lower than the statewide average; however, the trends seemed to be similar up until 2006. Both California and Napa County saw a slight decrease in the property crime rate between 1999 and 2001, followed by a steady increase between 2002 and 2005. California experienced a decrease of approximately 63 crimes reported per 100,000 population in 2006 while Napa County saw an increase of approximately 75 reported property crimes per 100,000 population. However, since 2007 property crimes have been declining for both the State of California and Napa County.

Reported violent crimes in Napa County remained steady between 1999 and 2003. In 2004, the number of reported violent crimes increased by 71 (18.6%) and again increased by 26 (2.5%) in 2005 yet decreased by 14 (2.9%) in 2006. The number of aggravated assaults which had been on the rise in 2004 and 2005, decreased by 55 (13.9%) in 2006. The number of reported robberies nearly doubled while forcible rapes and homicides remained stable.

Between 2007 and 2008, aggravated assault increased by 379 (110%) causing staff to question whether there was a change in reporting or charging practices. This change caused Napa County's violent crime rate to rise above the statewide average. Staff believes that there was a reporting error by one or more of the police agencies. Assaults are typically characterized as either a simple assault or an aggravated assault. Aggravated assault is defined as the unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault is usually accompanied by the use of a weapon or by means likely to produce death or great bodily harm. Simple assault is defined as the unlawful attack by one person by another typically with no intent to cause great bodily harm or injury. It is likely that one or more of the local police agencies reported simple assault statistics with aggravated assault statistics, which would lead to a false increase in the number of aggravated assaults in the number of aggravated assaults in the County of Napa on the California Crime Index. In 2009, that error seems to be corrected, with Aggravated Assaults down by 37% to 452.

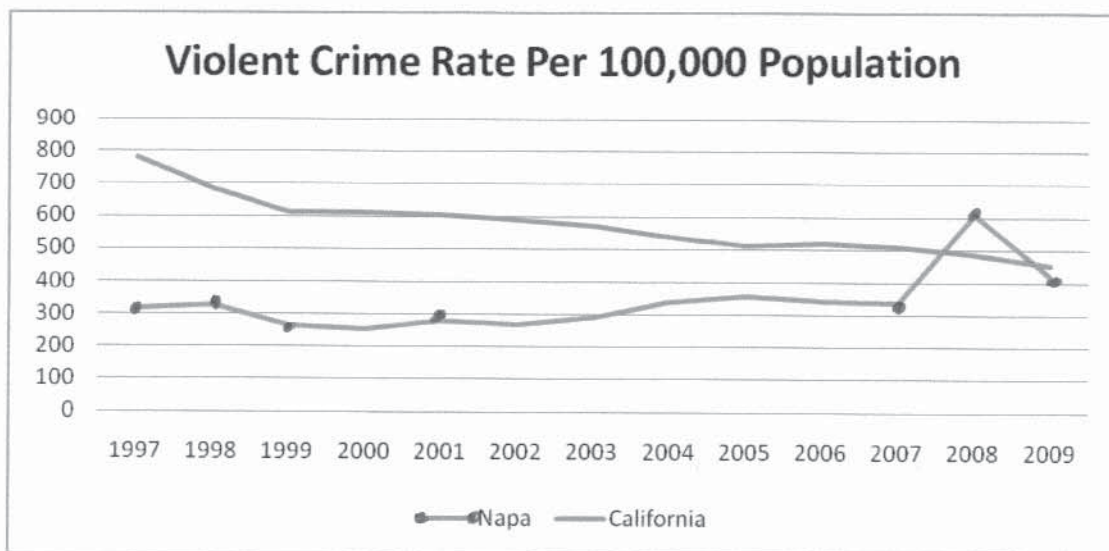
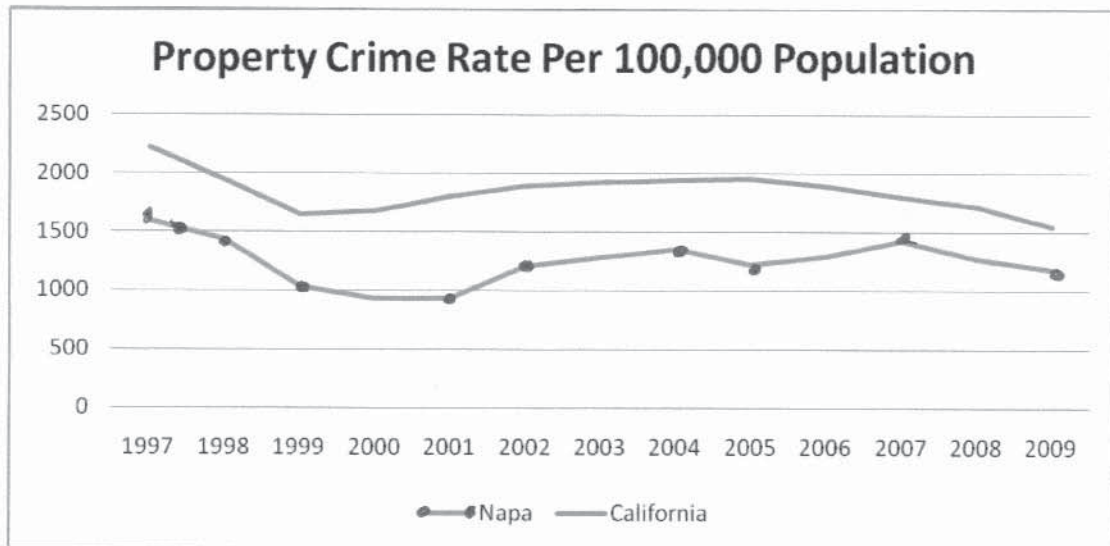
Functional Area: Law/Justice and Public Safety
COMMUNITY INDICATORS

Other than the increase in 2008 due to the aggravated assault reporting error, the overall violent crime rate per 1,000 population remains lower in Napa than it is statewide. California's violent crime rate per 100,000 population increased slightly from 485.6 to 453.6 (6.5%) while Napa County's violent crime rate decreased significantly due mostly to the reduced number of aggravated assaults from 607.3 to 418.8 (31%) in 2009.

Reported Property Crimes			
Year	Burglary	Motor Vehicle	
		Theft	Total
1997	885	334	1,219
1998	833	258	1,091
1999	578	189	767
2000	503	204	707
2001	482	163	645
2002	564	347	911
2003	581	372	953
2004	596	436	1,032
2005	652	348	1,000
2006	708	356	1,064
2007	807	366	1,173
2008	768	307	1,075
2009	716	309	1,025

Reported Violent Crimes					
Year	Homicide	Forcible Rape	Robbery	Aggravated Assault	Total
1997	2	30	48	305	385
1998	1	32	62	309	404
1999	2	28	40	261	331
2000	3	37	46	236	322
2001	1	36	52	272	361
2002	2	26	49	268	345
2003	2	39	51	288	380
2004	3	50	58	340	451
2005	1	36	44	396	477
2006	2	36	84	341	463
2007	6	29	82	343	460
2008	1	39	70	722	832
2009	1	34	93	452	580

Functional Area: Law/Justice and Public Safety
COMMUNITY INDICATORS



Functional Area: Law/Justice and Public Safety
COMMUNITY INDICATORS

Reported Property Crimes 2009			
County	Burglary	Motor Vehicle Theft	Total
Nevada	366	100	466
Napa	716	309	1,025
El Dorado	932	178	1,110
Humboldt	1057	475	1,532
Madera	1166	520	1,686
San Luis Obispo	1,433	375	1,808
Yolo	1357	559	1,916
Santa Cruz	1732	847	2,579
Santa Barbara	2,290	682	2,972

Reported Violent Crimes 2009					
County	Homicide	Forcible Rape	Robbery	Aggravated Assault	Total
Nevada	1	36	17	235	289
Humboldt	8	33	117	383	541
El Dorado	3	50	71	396	520
Yolo	7	68	171	310	556
Napa	1	34	93	452	580
Madera	3	36	162	484	685
San Luis Obispo	4	89	106	495	694
Santa Cruz	10	79	222	904	1215
Santa Barbara	11	123	262	1501	1897

In 2009, compared to other comparable counties, Napa County had a lower number of reported property and violent crime rates, which may be an indication of effective law enforcement and criminal justice strategies and may be a result of Napa County's socioeconomics. Napa County's quality of life is likely better due to these lower crime statistics. Nevada County has significantly fewer reported property crimes for a population of only 97,047 compared to Napa County's population of approximately 132,565. Of Nevada, El Dorado, Yolo and Humboldt Counties, only Yolo County has a larger population. Napa County is amongst the lowest for reported homicide, forcible rape crimes, and robberies. The County falls in the middle for reported aggravated assaults.

COMMUNITY INDICATORS

Crime Rates per 100,000 Population-2009	
County	Property Crimes
El Dorado	956.5
Santa Barbara	1,094.7
San Luis Obispo	1,107.1
Napa	1,179.8
Madera	1,402.2
Yolo	1,473.3
Humboldt	1,702.9
Santa Cruz	1,773.7

Crime Rates per 100,000 Population-2009	
County	Violent Crimes
San Luis Obispo	255.3
El Dorado	286.5
Yolo	275
Humboldt	286.5
Napa	418.8
Santa Barbara	438.1
Madera	448
Santa Cruz	448.5

In regards to crime rates per 100,000 population, Napa County is in the middle of crime rates per 100,000 population for both property crime and violent crime rates. As compared to more similarly sized counties, Napa County has the 4th lowest reported property crime. Unfortunately, data from Nevada County was not available. Napa County's low crime rates per 100,000 population may be a result of effective law enforcement and criminal justice strategies and may contribute to a higher quality of life.

State Controller Schedules
County Budget Act
2010 Revision # 1

County of Napa
Financing Sources and Uses by Budget Unit by Object
Governmental Funds
For the Fiscal Year 2013

Schedule 9

Fund: 1000 - General Fund
Budget Unit: 13600 - Sheriff
Function: Public Protection
Activity: Police Protection

Account	Detail by Revenue Category and Expenditure Object	2010-2011 Actuals	2011-2012 Actuals	2012-2013 Recommended	2012-2013 Adopted by the Board of Supervisors
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License, Permits and Franchises

42600	Safety Permits	1,431.00	1,443.00	1,400.00	1,400.00
	License, Permits and Franchises	\$ 1,431.00	\$ 1,443.00	\$ 1,400.00	\$ 1,400.00

Intergovernmental Revenues

43610	State - Prop 172 Public Safety Funds	3,869,301.98	4,229,109.10	4,268,722.00	4,268,722.00
43615	State - COPS	99,999.99	452.47	-	-
43710	State - SB 90 Mandates	81,083.00	-	-	-
43790	State - Other Funding	786,222.40	552,965.97	388,358.00	388,358.00
43890	Federal - Other Funding	210,011.68	225,610.67	-	-
	Intergovernmental Revenues	\$ 5,046,619.05	\$ 5,008,138.21	\$ 4,657,080.00	\$ 4,657,080.00

Fines, Forfeitures, and Penalties

44200	Court Fines	-	10,545.18	-	-
44310	Parking Fines/Penalties	52,646.36	39,790.53	50,000.00	50,000.00
	Fines, Forfeitures, and Penalties	\$ 52,646.36	\$ 50,335.71	\$ 50,000.00	\$ 50,000.00

Revenue from Use of Money and Property

45100	Interest	1,357.02	1,087.70	-	-
	Revenue from Use of Money and Property	\$ 1,357.02	\$ 1,087.70	\$ -	\$ -

Charges for Services

46110	Auditing/Accounting Fees	148.85	-	-	-
46150	Civil Process Services	52,957.36	56,154.00	50,000.00	50,000.00
46175	Law Enforcement Services	206,079.68	160,981.25	199,000.00	199,000.00
46195	Copies/Reports	2,880.54	2,652.80	5,000.00	5,000.00
46400	Educational Services	30,493.30	14,193.05	40,000.00	40,000.00
46810	Charges for Services - American Canyon	4,860,261.90	4,909,762.86	5,174,676.00	5,174,676.00
46815	Charges for Services - City of Napa	-	-	20,000.00	20,000.00
46820	Charges for Services - Yountville	810,834.15	834,000.50	859,020.00	859,020.00
		A112			

Fund: 1000 - General Fund
 Budget Unit: 13600 - Sheriff
 Function: Public Protection
 Activity: Police Protection

Account	Detail by Revenue Category and Expenditure Object	2010-2011 Actuals	2011-2012 Actuals	2012-2013 Recommended	2012-2013 Adopted by the Board of Supervisors
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46840	Charges for Services - Courts	1,525,009.48	-	-	-
	Charges for Services	\$ 7,488,665.26	\$ 5,977,744.46	\$ 6,347,696.00	\$ 6,347,696.00

Miscellaneous Revenues		(97.13)	1,663.45	1,000.00	1,000.00
47900	Miscellaneous				
	Miscellaneous Revenues	\$ (97.13)	\$ 1,663.45	\$ 1,000.00	\$ 1,000.00

Other Financing Sources		-	11,030.00	-	-
48100	Sale of Capital Assets				
48200	Transfers-In		56,792.00	2,153,934.21	2,313,041.00
	Other Financing Sources	\$ -	\$ 56,792.00	\$ 2,164,964.21	\$ 2,313,041.00

Special Items		-	68,713.54	-	-
49900	Intrafund Revenue				
	Special Items	\$ -	\$ 68,713.54	\$ -	\$ -

Total Revenues		\$ 12,647,413.56	\$ 13,274,090.28	\$ 13,370,217.00	\$ 13,370,217.00
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Salaries and Employee Benefits		10,708,100.63	11,063,694.48	11,659,541.96	11,659,541.96
51100	Salaries and Wages				
51110	Extra Help		404,812.43	375,000.00	375,000.00
51115	Overtime		1,304,064.37	1,390,669.19	875,000.00
51120	Holiday Pay		216,502.04	206,374.73	225,000.00
51200	401A Employer Contribution		8,000.00	7,950.00	8,000.00
51205	Cell Phone Allowance		12,550.00	13,358.00	13,320.00
51230	Uniform Allowance		69,500.00	86,680.43	91,575.00
51300	Medicare		173,436.48	181,323.93	161,087.03
51400	Employee Insurance - Premiums		1,533,482.28	1,682,765.06	1,897,260.55
51405	Workers Compensation		279,164.00	493,823.00	659,602.00

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 For the Fiscal Year 2013

Schedule 9

Fund: 1000 - General Fund
 Budget Unit: 13600 - Sheriff
 Function: Public Protection
 Activity: Police Protection

Account	Detail by Revenue Category and Expenditure Object	2010-2011 Actuals	2011-2012 Actuals	2012-2013 Recommended	2012-2013 Adopted by the Board of Supervisors
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51600	Retirement	2,891,309.99	3,042,547.48	2,974,531.96	2,974,531.96
51605	Other Post Employment Benefits	433,597.00	450,683.20	600,294.00	600,294.00
	Salaries and Employee Benefits	\$ 18,034,519.22	\$ 19,030,005.92	\$ 19,656,893.63	\$ 19,656,893.63

Services and Supplies					
52130	Information Technology Services	700,063.92	706,010.04	779,634.00	779,634.00
52215	Research/Investigative Services	5,656.25	4,370.35	-	-
52220	Medical / Laboratory Services	12,385.72	13,335.56	-	-
52400	Dispatch Services	1,750,000.00	1,890,000.00	2,040,000.00	2,040,000.00
52490	Other Professional Services	42,324.45	9,309.76	8,000.00	8,000.00
52500	Maintenance - Equipment	152,772.29	208,973.46	68,750.00	68,750.00
52505	Maintenance - Buildings/Improvements	14,039.81	21,269.03	17,500.00	17,500.00
52520	Maintenance - Vehicles	56,237.33	31,152.13	205,000.00	205,000.00
52600	Rents and Leases - Equipment	50,303.79	49,634.87	49,792.00	49,792.00
52700	Insurance - Liability	390,541.00	346,701.00	278,117.00	278,117.00
52705	Insurance - Premiums	-	-	5,000.00	5,000.00
52800	Communications/Telephone	73,464.18	65,950.68	55,000.00	55,000.00
52830	Publications and Legal Notices	265.00	603.68	55,000.00	55,000.00
52900	Training/Conference Expenses	154,112.89	121,415.04	1,200.00	1,200.00
52905	Business Travel/Mileage	1,029,886.46	1,055,174.84	160,000.00	160,000.00
52910	Transport of Prisoners	156,560.04	78,227.48	1,055,373.00	1,055,373.00
53100	Office Supplies	32,501.99	31,768.60	60,000.00	60,000.00
53120	Memberships/Certifications	7,245.00	8,017.00	35,000.00	35,000.00
53300	Clothing and Personal Supplies	30,207.99	17,028.03	6,700.00	6,700.00
53315	Medical / Laboratory Supplies	-	-	25,000.00	25,000.00
53400	Minor Equipment/Small Tools	2,990.00	-	42,100.00	42,100.00
53600	Special Department Expense	56,086.05	101,881.63	55,000.00	55,000.00
53620	Law Enforcement Supplies	431,162.71	656,256.30	630,100.00	630,100.00
53630	Recruitment Supplies	-	35,212.75	27,000.00	27,000.00
	Services and Supplies	\$ 5,148,806.87	\$ 5,452,292.23	\$ 5,604,266.00	\$ 5,604,266.00

Fund: 1000 - General Fund
 Budget Unit: 13600 - Sheriff
 Function: Public Protection
 Activity: Police Protection

Account	Detail by Revenue Category and Expenditure Object	2010-2011 Actuals	2011-2012 Actuals	2012-2013 Recommended	2012-2013 Adopted by the Board of Supervisors
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Capital Assets					
55400	Equipment		201,865.68		
	Capital Assets	\$ -	\$ 201,865.68	\$ -	\$ -
	Total Expenses	\$ 23,183,326.09	\$ 24,684,163.83	\$ 25,261,159.63	\$ 25,261,159.63
	Net Cost	\$ 10,535,912.53	\$ 11,410,073.55	\$ 11,890,942.63	\$ 11,890,942.63

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County of Napa
 Financing Sources and Uses by Budget Unit by Object
 Governmental Funds
 For the Fiscal Year 2013

Schedule 9

Fund: 1000 - General Fund
 Budget Unit: 13610 - Sheriff - Coroner
 Function: Public Protection
 Activity: Police Protection

Account	Detail by Revenue Category and Expenditure Object	2010-2011 Actuals	2011-2012 Actuals	2012-2013 Recommended	2012-2013 Adopted by the Board of Supervisors
Revenue from Use of Money and Property					
45300	Rent - Building/Land	30,000.00	30,000.00	30,000.00	30,000.00
	Revenue from Use of Money and Property	\$ 30,000.00	\$ 30,000.00	\$ 30,000.00	\$ 30,000.00
Charges for Services					
46175	Law Enforcement Services	-	-	15,000.00	15,000.00
46800	Charges for Services	11,542.20	4,519.00	-	-
	Charges for Services	\$ 11,542.20	\$ 4,519.00	\$ 15,000.00	\$ 15,000.00
Other Financing Sources					
48200	Transfers-In	1,427.00	1,654.00	1,654.00	1,654.00
	Other Financing Sources	\$ 1,427.00	\$ 1,654.00	\$ 1,654.00	\$ 1,654.00
	Total Revenues	\$ 42,969.20	\$ 36,173.00	\$ 46,654.00	\$ 46,654.00
Salaries and Employee Benefits					
51100	Salaries and Wages	231,905.86	190,560.29	180,987.81	180,987.81
51110	Extra Help	568.51	10,848.95	30,000.00	30,000.00
51115	Overtime	357.46	730.29	700.00	700.00
51200	401A Employer Contribution	270.00	1,405.00	1,000.00	1,000.00
51205	Cell Phone Allowance	975.50	1,566.50	1,560.00	1,560.00
51230	Uniform Allowance	750.00	925.00	925.00	925.00
51300	Medicare	3,336.44	2,920.12	2,596.10	2,596.10
51400	Employee Insurance - Premiums	42,029.78	39,353.47	34,357.32	34,357.32
51405	Workers Compensation	1,224.00	13,859.00	16,546.00	16,546.00
51600	Retirement	61,205.81	52,424.29	46,829.12	46,829.12
51605	Other Post Employment Benefits	10,966.00	11,208.72	4,856.00	4,856.00
	Salaries and Employee Benefits	\$ 353,589.36	\$ 325,801.63	\$ 321,090.47	\$ 321,090.47

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Schedule 9

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 Budget Unit: 13610 - Sheriff - Coroner
 Function: Public Protection
 Activity: Police Protection

Account	Detail by Revenue Category and Expenditure Object	2010-2011 Actuals	2011-2012 Actuals	2012-2013 Recommended	2012-2013 Adopted by the Board of Supervisors
Services and Supplies					
52130	Information Technology Services	16,845.96	17,880.96	19,126.00	19,126.00
52210	Burial Services	2,254.00	2,781.00	1,654.00	1,654.00
52220	Medical / Laboratory Services	-	172,465.35	-	-
52490	Other Professional Services	165,888.40	-	181,000.00	181,000.00
52500	Maintenance - Equipment	428.00	-	250.00	250.00
52700	Insurance - Liability	478.00	381.00	107.00	107.00
52900	Training/Conference Expenses	550.00	-	1,000.00	1,000.00
52905	Business Travel/Mileage	-	-	1,000.00	1,000.00
53100	Office Supplies	1,965.81	1,332.01	2,000.00	2,000.00
53120	Memberships/Certifications	880.00	200.00	450.00	450.00
53315	Medical / Laboratory Supplies	8,979.73	7,340.62	10,000.00	10,000.00
53400	Minor Equipment/Small Tools	659.72	37.79	-	-
53600	Special Department Supplies	6,823.56	6,657.12	-	-
53620	Law Enforcement Supplies	-	-	4,000.00	4,000.00
	Services and Supplies	\$ 205,753.18	\$ 209,075.85	\$ 220,587.00	\$ 220,587.00
	Total Expenses	\$ 559,342.54	\$ 534,877.48	\$ 541,677.47	\$ 541,677.47
	Net Cost	\$ 516,373.34	\$ 498,704.48	\$ 495,023.47	\$ 495,023.47



A Tradition of Stewardship
A Commitment to Service

**NAPA COUNTY GRAND JURY
2012-2013**

JUNE 24, 2013

FINAL REPORT

**NAPA COUNTY
ELECTION DIVISION**

NAPA COUNTY ELECTION DIVISION

SUMMARY

Given the importance of the National Election of 2012 and an interest in following up the results of a previous grand jury report, the 2012-2013 Napa Grand Jury investigated the Napa County Election Division. During the course of its study, citizens' complaints were brought to the Grand Jury's attention regarding events before and during the November 2012 Election. These were included in the investigation.

Overall, the Grand Jury found that preparation and voting procedures for the November 2012 County General Election were proficiently carried out by Election Division staff. Election Division staff and polling place volunteers were observed by the Grand Jury to perform their duties in an effective and professional manner.

The Grand Jury recommends that the Registrar of Voters (ROV) be restored to an appointed position rather than an elected official. The office of the ROV should be made an independent department at a new location with more storage space, easier accessibility, with its own appointed manager and should be separated from the elected Assessor/Recorder/Clerk. This would permit the creation of a Napa County Election Board independent from the ROV to oversee county elections.

The Grand Jury notes that Napa County voters have expressed concerns regarding several election related issues, especially the ROV's decision to close the majority of Napa County polling places, the delay in prompt reporting of interim election results during the last election and the Vote-by-Mail system (VBM) in Napa County.

The Grand Jury recommends that the ROV publish periodic interim election results prior to the final certification that occurs 28 days after the election. Some observers of the county election process point out that it would be preferable to publish interim results regularly as the votes are counted so that citizens are fully aware of the tallying process, even though they are aware that final election results can change from the previous preliminary counts. This would enhance the transparency of the election process.

The Grand Jury has observed that the closing of the majority of polling places and the switch to VBM for the majority of county voters has resulted in a considerably reduced opportunity for citizens to interact with each other during election cycles. VBM relies heavily on the United States Postal Service (USPS) for the delivery of ballots and election materials, which are date sensitive.

Both supporters and critics of VBM share a common concern, namely, whether the ease and cost savings that VBM offers outweigh the benefits of greater civic participation in our electoral system and ballot security offered by voting at neighborhood polling places.

BACKGROUND

Election Division

Napa County Election Division is one of four Napa County divisions (Registrar of Voters, Assessor, Recorder, and Clerk) consolidated under one manager since 1998. In Napa County, John Tuteur serves this function as the elected Assessor-Recorder-County Clerk and the *ex-officio* Registrar of Voters. This consolidation of offices is unusual and is found in few other California counties. The duties of these four divisions are as follows:

Recorder

- Maintains official records to provide a public record and to give constructive notice of transactions relating to real property in Napa County
- Serves as the local registrar of marriages and keeps the birth and death records for the County
- Films and indexes all documents in order that copies may be prepared upon request
- Makes available to the public the records for property searches and for genealogical research

County Clerk

- Files and maintains indexes of non-court related documents, bonds, fictitious business name statements (FBN's)
- Issues marriage licenses

Assessor

- Locates and identifies the ownership of all taxable property in the county
- Determines the taxability of all property
- Determines the reappraisability of property when it changes ownership
- Determines the reappraisability of property that undergoes new construction
- Annually assesses all real estate in accordance with the California Constitution (Proposition 13)
- Annually assesses all taxable personal property at its fair market value
- Determines and applies all legal exemptions
- Surrenders an accurate assessment roll to the Auditor's Office prior to July 1 annually

Registrar of Voters

- Prepares and distributes election materials including sample ballot pamphlets and ballots
- Maintains voter registration rolls and election jurisdiction boundaries by supervisorial district, trustee area, agency boundary and precincts

- Conducts elections for County and other agencies (with full reimbursement of costs)
- Tallies and certifies results of elections
- Receives and maintains campaign reporting and conflict of interest filings
- Processes candidate nominations, statements and reporting

Napa County Election Division

- Provides voter registration materials to eligible residents of Napa County
- Distributes election-related deadlines and information to candidates, agencies and measure proponents
- Distributes absentee and polling place voting opportunities to registered voters
- Provides election and related statistics to the California Secretary of State
- Provides community education to increase voter registration and turnout.
- Trains poll workers to staff voting precincts
- Verifies and processes nominations and both local and statewide petitions
- Prepares, distributes and processes VBM ballots
- Equips voting precincts
- Tabulates election results

Since Napa County's ROV is an elected official, this precludes the appointment of an independent Napa County Election Board that would be empowered to provide oversight as to the operations of the Election Division concerning procedures followed during elections. This essentially means that aside from an occasional and optional review by the sitting Napa County Grand Jury, the ROV is the only official with direct oversight of elections. The Grand Jury is concerned that the ROV is the sole and final arbiter of ballot inspection and verification for his own election.

Election Preparation and Procedures

In addition to interviewing Election Division staff, the Grand Jury observed its advance preparations and procedures for the November 2012 General Election. These included the distribution and handling of ballots, the testing and monitoring of elections equipment, the procedures for chain of custody during ballot transport from polling place to Election Office, the storage and safety of ballots, the counting of ballots and the visiting of several precinct polling places.

Testing

Preparations for county elections start many months in advance of Election Day. Materials are ordered and electronic voting machines and ballot counters are tested. This "Logic and Accuracy" testing (L&A) is the process by which voting equipment is

configured, tested, and certified for accuracy prior to an election through specific procedures defined by the California Secretary of State.

In Napa County, the participants in the L&A testing consist of Election Division staff, the ROV, Information Technology (IT) staff responsible for submitting election results to the Elections website, a hardware and software vendor for polling machines, and a voting equipment instructor for precinct workers.

The Grand Jury observed the testing of a random polling machine, its software and its security measures, all of which appeared to perform properly. The Grand Jury observed a demonstration of the automatic ballot counting machine, which separates valid ballots from those that need to be inspected manually before they are counted. The ballot counting machine performed properly during the observation.

Accuracy and Validation

Many of the boxes containing mail ballots are securely stored in the Election Office and counted automatically by the ballot counting machine. Incorrectly marked ballots and those in which the machine detects an error are removed for inspection. The remaining non-mailed ballots are either dropped off at polling stations or the Election Office. The Grand Jury observed that the Election Office storage area is limited, and boxes are stored against the walls in open areas throughout the office space.

Each ballot must have its signature on the envelope verified, then opened and reviewed by election personnel to make sure of its validity. The ROV personally inspects any return envelopes on which a signature has been challenged as not matching the signature on file from the original registration affidavit. The ROV is the sole and final arbiter of the validity of all ballots.

Volunteers

Volunteer poll workers assist the ROV and the Election Staff in conducting Napa County elections. The election process depends upon the professionalism of these citizen volunteers who are trained to manage the county polling places. The duties of volunteer poll workers include: picking up the blank ballots and voting equipment, setting up the equipment at the polling place, assisting voters and managing the voting process on Election Day, and returning the ballots to the central counting place after the polls close.

Responsibilities

In order to provide for the security of the ballots and voting equipment, the ROV oversees the following:

- Storing all voting equipment, memory cards, numbered seals and ballots in locked keypad rooms, accessible only to designated Election Division employees.
- Assigns poll workers to act as agents of the ROV. Poll workers are given an oath of office and swear to uphold the laws of the United States and the State of California.
- Establishes a documented chain of custody for the ballots and equipment. The ROV verifies that the chain of custody has not been broken. If there is a break in the chain of custody, the ROV takes steps to assure the integrity of the ballots and equipment.
- Secures the ballot containers with tamper-evident tape and then further seals the equipment with numbered, tamper-resistant seals before deployment to the poll workers. Election Division maintains a log of the seal numbers.
- Instructing poll workers to check that the seals on the equipment are not broken.
- The Election Division verifies that the number on the seal when the equipment is returned matches the number on the log for each machine.
- When the machine is returned to the election office on election night, should the seal be broken or if the number on the seal is different from the number on the Election Division log, the ballots are rescanned using a new memory card.

Complaints

Public complaints delivered verbally by office visit or phone calls, emailed, or posted by mail to the Election Division are handled either by Election Division personnel at the front desk or by the ROV personally. Although there is no formal record of complaints from the public, the Grand Jury was told by Election Division Staff that most of the complaints received related to voters unhappy with VBM, which occurred after the ROV closed most of Napa County polling places and implemented VBM for the vast majority of county voters. This has decreased the number of polling places in Napa County from 99 to 19. The decision was made unilaterally by the ROV without public hearings or opportunity for community input.

Facilities

The Election Division Office is located in downtown Napa at 900 Coombs. The office of the Election Division is on the third floor of the building by which street access is primarily via the alleyway of the Second Street Garage. An alternative of outside access for visitors is using a walkway from the third floor of the parking garage across to the third floor of the building. The Grand Jury thinks the location of the office and its lack of space hampers its accessibility to the public and is detrimental to the efficiency of operations, particularly during an election day. The Grand Jury observed numerous cars lining the alleyway to drop off ballots on the election night of November 2012. The Election Division staff performed commendably in keeping the process as efficient as possible and the inconvenience to the public at a minimum, but the office location creates a logistical problem for both the public and the staff.

In addition to access, the Grand Jury considers the offices interior space as problematic. Simply put, it is too small. The ROV is to be acknowledged for producing as many improvements as possible to assure the security of ballots and to establish comfort and privacy for the voters. However, given the limited amount of existing office space to carry out all the necessary and lawful responsibilities, it would be difficult to implement further improvements.

In spite of the new counter space for visitors and the reinforced partitions for storage, on election night voters were still lined up in the hallway as on previous voting days. Moreover, in an effort to facilitate ballot processing, and due to lack of Election Office space, an initial staging area was established by borrowing space from another department's office. In the Election Office, boxes of election materials were placed against the walls, narrowing the walking space between rooms.

The Grand Jury concludes the Election Division is in need of a better location and facility to properly serve Napa County citizens in the process of voting.

METHODOLOGY

The Grand Jury performed the following:

- Examined the Napa County Adopted Budget for the Registrar of Voters' Office for the last three years
- Reviewed and evaluated information contained in State and Napa County elections websites
- Reviewed Election Office procedures related to:
 1. Complaints
 2. Security
 3. Voter registration
 4. Tabulation and certification of election results
 5. Vote by Mail ballots and envelopes
 6. Election administration
 7. Training
 8. Receiving and verifying nominations and petitions
 9. Equipment operation
 10. Polling place accessibility

Interviews Conducted:

- Napa County Registrar of Voters
- Napa County Assistant Registrar of Voters
- Election Division permanent staff members
- Election Division volunteers
- Members of the Napa County Board of Supervisors and senior County staff

Observations:

- Logic & Accuracy testing procedures for November 2012 Election, including a demonstration of the accuracy of Napa County's touch-screen voting machines and the Election Division ballot counting machine
- Precinct worker training tools and orientation materials
- Procedures at select precinct polling places
- Tour of Election Division Office space, with attention to security measures and voting equipment
- Procedures at Election Division Office on Election Day

DISCUSSION

I. Elected vs. Appointed ROV

In examining the office of Registrar of Voters, the Grand Jury has taken note that the office has, since 1998, been made part of a combined elective office, that of Assessor, County Clerk and Recorder. Prior to that date the position was an appointive one. In 1997 the Board of Supervisors (BOS) passed legislation combining the four departments. It was believed there could be certain savings effected by the combination of the offices under one elected official. This office has been held by only one person since consolidation. The Grand Jury believes the 1997 decision of the Board of Supervisors should be re-evaluated. In very few other counties are important divisions, such as Election, consolidated with the demanding functions of the Assessor's office.

Reasons for Re-evaluation

After careful examination the Grand Jury questions the ability of a single Napa County manager to oversee the operations of all four consolidated divisions (ROV, Assessor, Recorder, Clerk). The responsibilities of the office are enormous and vital to the County. As manager of these consolidated offices, Mr. Tuteur has many demanding duties, as specifically detailed in the Background section of this report. He has been faced with the extraordinary County-wide changes affecting the division, such as declining property values with the necessity of tax reappraisals, increased State-mandated election changes, special elections and the elimination of most polling places. The Grand Jury notes that the problems with this organizational arrangement can be greatly exacerbated, especially during the hectic several months before general elections when the full and undivided attention of the ROV is absolutely required. During election cycles, the ROV is understandably focused on the Election Division for several months and thus is less available to supervise the other divisions. The Grand Jury notes that some counties have chosen to have election staff working under a separate elected or appointed ROV who is able to concentrate energies solely to election issues, without distraction from the demands of other divisions, even if there should be an increased cost attendant to that structure.

The Grand Jury's investigation found that periodically since 2006, the Napa County BOS and County staff have researched alternatives to the current situation of an elected official with so many other important division responsibilities serving as ROV. In 2009, County staff presented to the BOS a detailed evaluation of the office in which the County Executive's staff, after laying out the pros and cons of an elective vs. appointed ROV, concluded with the recommendation that the status quo be retained. At that time, the BOS followed that recommendation and took no action to change the office of ROV. The Grand Jury has learned, and it has also recently been reported in the local press, that County staff, at the behest of a member or members of the BOS, have once again prepared a detailed analysis of the office. In this most recent analysis the staff offers no recommendation whether the office should be retained as presently constituted or be changed to an appointed one. At the time of this writing, the Napa County BOS has discussed the matter and has tabled the issue until Fall 2013.

Advantages of an Appointed ROV

The Grand Jury finds there are several compelling advantages to changing the current elected position to an appointive one. First, the position is one which requires not only managerial competence but also, and as importantly, technical proficiency. Elections in California are in the process of change (witness the dramatic change of Napa County from a machine-based polling place electorate to one that is predominately VBM). Furthermore, California's recent decision to include electronic voter registration strongly suggests that another challenge to bring voting into the 21st Century will most certainly involve the greater use of Internet voting options. As a practical matter, it is far easier for an appointee for the position of ROV to be accurately screened and evaluated by the appointing body for those crucial technical and managerial proficiencies than by the electorate as a whole.

Second, we must consider the issue of the appearance of conflict of interest when the position is elective. In its interviews, the Grand Jury determined that the ROV is the final authority for determining the validity of improperly executed ballots, questioned signatures and other matters such as which polling places are to be closed and which are to remain open. This is the case whether or not the position of ROV itself is on the ballot. Changing the office to an appointive one would clearly obviate this appearance of conflict of interest.

Third, the appointive ROV's performance while holding the office would be appropriately scrutinized by the appointing body to ensure high-quality conformance with good practices and the will of the voters of the County. If the appointee's performance falls below legitimate expectations and problems or issues arise, an appointed position will allow appropriate and timely intervention by the appointive board. This rapid intervention is not possible when the position is held by an elected official and voters must await the next election cycle. Thus, accountability for ultimate performance would be shifted from one elected official to a more representative number. The Grand Jury believes greater and more timely scrutiny is necessary. Two recent developments which

occurred during the election of November 2012 are illustrative of this point as outlined below.

The Election of November 2012

During the course of its inquiry, the Grand Jury investigated the Election Division's procedures in collecting and recording each vote during the November 2012 election. Napa County registered voters had the option to cast their ballots, VBM, drop off at the precinct polls or deliver their ballots to the Election Division by 8:00 p.m. election night.

During the official canvass of the November 2012 election, the Grand Jury received complaints from citizens and elected officials regarding two points:

- A. The closure of precinct polling locations and,
- B. The delay in providing timely interim election results.

As part of its investigation, the Grand Jury followed up on these issues.

A. Closure of Polling Places

There have been citizen complaints regarding the closure of the majority of Napa County polling places. The Grand Jury determined that there was little, if any, public input or discussion sought by the Election Division in reaching its decision to eliminate 80 of the previous 99 polling precincts during the November 2012 election. Some voters express concern that they were unable to find their polling place, that the distance to the polling place was too great for some voters while others missed the assistance offered at their former polling places. The Grand Jury makes no judgment on whether the benefits of closing the polling precincts outweigh the disadvantages. Nonetheless, the Grand Jury notes the voices of voters were not given opportunity for proper input on this decision and this is a concern in our local government that is intended to be of, by, and for the people.

The Election Division's stated purpose in reducing polling places and replacing them with VBM was twofold: (1) increase voter turnout and (2) reduce the costs of elections. In regards to the first point, voter turnout and registration increased though it cannot be determined with certainty whether this was due to VBM or the generally increased interest among voters in a national election. The reduction of polling precincts from 99 to 19 resulted in a significant increase in VBM ballots. In the November 2012 election, 85 percent of the registered voters in Napa County utilized VBM.

The percentage of both registered voters and VBM voters has increased steadily in the past few years. In the May 2009 Napa County Election, 68 percent of county registered voters were VBM voters. Subsequent elections showed that VBM increased to 73 percent in the June 2010, 78 percent in the November 2010, and 74 percent in the June 2012. In the most recent November 2012 election, 85 percent of registered voters were

VBM. This represents a 2.7 percent increase in countywide registration and a jump of 28 percent of VBM voters from May 2009.

The VBM process of 2012 was not totally trouble-free. The largest single concern voiced was the voter information pamphlet being delivered up to one week later than the ballots. The Election Division acknowledged the issue and will attempt to make changes in order to prevent the situation from recurring. The Election Division is in discussion with postal officials regarding coordinating delivery dates, and getting ballots/pamphlets to voters and then back to the Election Division within the time frame required by the California Elections Code.

B. Interim Election Results

As part of the investigation regarding complaints of limited release of interim election results, the Grand Jury interviewed members of the Election Division staff. The staff identified several issues they encountered when processing the 57,672 ballots of the November 2012 election. Signature comparisons of the voter registration form had to be matched to each of the mailed ballots in order to comply with the California Election Code. Ballots then had to be examined for errors committed by voters. Such errors included erasures, crossing out ballot marks for candidates and propositions, applying a whiteout-type product on the ballot and using a pencil or pen not dark enough for the vote counting machine to recognize. The aggregate of these ballot errors can slow down the vote count.

As ballots were processed through the ballot counting machine, the Election Division staff selected a random number of processed ballots and recounted them by hand, as mandated by California Elections Code. The hand-counted ballots were then compared to the count registered by the ballot counting machine in order to confirm the vote counting accuracy. Ballots received by the USPS offices within Napa County were held for the Election Division officials up to and until the eight p.m. deadline on election night, and the same procedure was applied to the ballots from the California Veterans Home and Napa State Hospital.

Of the hundreds of ballots the Election Division staff carefully examined, any questionable ballots were forwarded to the ROV himself for inspection and final acceptance or rejection. The Election Division Staff acknowledges that delays are an intrinsic part of the election process, but their primary commitment is to insure that each vote is counted accurately. They insist that the pursuit of timely election reporting should never be compromised by an inadequate or incomplete count.

The Grand Jury completely agrees with the Election Division's goal that election voting results accuracy is the highest priority. However, the Grand Jury found that the Napa County Election Division intentionally did not update interim election results between the unofficial preliminary election results released on Election Day, and the publishing of the final certified results several weeks later. During this period, many citizens and

candidates running for election in close races found the lack of interim reporting to be frustrating. The Grand Jury found that it is entirely feasible to release interim vote tabulations (as is done routinely in many other counties) without compromising accuracy and at the minimal cost of hiring several temporary personnel for a few days.

The Grand Jury found that in Napa County it is solely up to one individual, the ROV, as an elected official to decide whether or not the Election Division releases voting results on an interim basis prior to final tally certification. The Napa County ROV stated he decided not to release interim results because interim results are unofficial, and thus have no predictive bearing on the final outcome of races, despite the wishes of many County voters to see interim results.

The Grand Jury observed that other counties choose to release interim election results, especially in cases when the preliminary results foreshadow a close election due to public interest in the election results and to facilitating those likely to be elected to plan a start on their duties. Many outside election observers point out that it is generally preferable to publish interim election results so that citizens can monitor the tallying process. This enhances and facilitates the transparency of the election process.

The ROV may be concerned that interim ballot results might wrongly be construed prior to final election results. However, the Grand Jury believes such concerns can be addressed by the inclusion of cautionary language as the interim results are published. The ROV can explain to the public the results are not yet official and changes or corrections might occur during the process of determining the official final count. Several Napa County officials and candidates for elected office stated they supported the release of interim election results prior to the final ballot certification, which occurred 28 days after the election as mandated by the State.

II. County Elections Board

This brings into consideration yet another significant advantage to returning the position to an appointive one. Concern has been raised with some frequency regarding the insensitivity of the office in responding to voters' complaints, such as the summary closing of polling places without proper public input and the adamant position taken against release of interim voting results, information to which the voter and candidates are entitled. A significant advantage of the change to appointive from elective would be the ability of the BOS to create a County Elections Board that could address such issues.

Such a board would be designed to oversee the Election Division to insure that the county election process is conducted transparently and that public concerns are heard and appropriately acted upon. As it currently stands, with an elected county ROV, the only independent oversight of county elections is the sitting Grand Jury. With its many other county "watchdog" duties, it is impossible for the sitting Grand Jury to review every county election cycle in detail. The operation of a smooth, responsive election process is essential to a well-functioning democracy. It is almost inconceivable that an office with these most important and challenging responsibilities is not subject to periodic audit and

oversight by independent citizens board charged with that particular responsibility. An ROV, whether elected or appointive, should welcome this validation. The Grand Jury recommends the transition of the Registrar of Voters for the County of Napa to an appointive position and further, the appointment of an oversight Elections Board as described above. A board that is representative of the whole county would enhance voter confidence in the entire election process.

Conclusion

The Napa County Grand Jury considers voting germane to the concept of American citizenship, and sees an opportunity to improve the voting experience of its fellow citizens in Napa County. The issue of having an appointed ROV rather than an elected ROV is too important to ignore. Moreover, this change needs to be considered in conjunction with its crucial corollary, namely the establishment of a County Election Board charged with the responsibility of overseeing County elections.

If the Grand Jury were merely concerned whether the ROV followed the official legal requirements of the office, perhaps an elected ROV would suffice. However, there have been issues regarding County voters' particular preferences and needs, which have been treated as inconsequential by the ROV. This failure to respond to citizens' voting concerns could be prevented by having a ROV who (1) is not responsible for managing other County Divisions, (2) is appointed, (3) is informed by an independent Elections Board and, (4) maintains an accountable complaint system.

The Grand Jury acknowledges the County staff report that stated the proposed change of an appointed ROV versus an elected position might contribute to additional Election Division costs. However, those costs are offset by greater transparency and accountability in the election process.

FINDINGS

- F1.** The *ex-officio* Napa County ROV also serves as the elected Assessor/Recorder/Clerk. This places unique demands upon an official managing several consolidated divisions.
- F2.** The Grand Jury finds it concerning that the elected ROV is directly involved in supervising elections and validating ballots for which he is a candidate on the ballot.
- F3.** The ROV could be an appointed stand-alone manager separated from the elected Assessor/Recorder/Clerk position and could be appointed by the BOS, as is the case in several other California counties.
- F4.** Currently there can be no significant oversight by an appointed Napa County Board of Elections because the ROV is an elected county official.

- F5.** If the ROV were appointed rather than elected, there could be an independent County Board of Elections appointed to oversee that proper procedures are being followed for every election and that voters in Napa County are receiving timely and accurate election results.
- F6.** There is public interest in reporting interim election results. The ROV can release interim elections results, as is done in other counties, providing for a more transparent election process.
- F7.** In the last several years, Napa County has experienced closure of the vast majority of polling places and a switch to VBM for 85 percent of county registered voters.
- F8.** Some voters and some elected officials in Napa County expressed dissatisfaction with the closure of a majority of local precincts and miss the participatory civic experience offered by local polling places.
- F9.** A number of voters in Napa County are disgruntled at the lack of opportunity to provide input or feedback in regard to closing the majority of polling places.
- F10.** There was a delay in receiving the ballot information pamphlets which may have led to some voters to mail in their ballots without sufficient information.
- F11.** Logic and Accuracy testing of polling machines was carried out by Election Staff and election partners prior to the 2012 General Election. It was observed by the Grand Jury that proper procedures were followed.
- F12.** The Grand Jury found that the transfer of ballots from county polling places to the Election Office and the handling and counting of polling place ballots on Election Day followed proper procedures.
- F13.** Security measures for handling, maintaining chain of custody, storing and counting ballots appear to be adequate.
- F14.** The Grand Jury observed inconvenient access for the public to the election office facilities during the hectic general election periods. There is a need for more office storage space during the busy general election periods.
- F15.** The Grand Jury found that the Election Division has no formal archive of complaints from the public.

RECOMMENDATIONS

- R1.** The Napa County Board of Supervisors change the elected status of *ex-officio* Registrar of Voters to an appointed office.
- R2.** Upon the establishment of an appointed Registrar of Voters, the Napa County Board of Supervisors should establish an oversight committee of Napa County voters that would be charged with monitoring the performance and procedures of the Registrar of Voters.
- R3.** The Napa County Election Division publishes periodic interim election results in addition to the initial voting results on Election Day.
- R4.** The Registrar of Voters solicits voter input regarding the reduction of polling precincts in favor of vote by mail.
- R5.** The Registrar of Voters solicit input from voters through a vigorous media campaign, flyers to registered voters, as well as an online survey to determine how and where Napa citizens choose to vote.
- R6.** The Registrar of Voters ensure that voter pamphlets and ballots are received at the same time.
- R7.** The Registrar of Voters publish the voter information pamphlet on the Election Division website.
- R8.** The Election Division create an archive of public concerns and/or complaints and its responses thereto.
- R9.** Napa County Board of Supervisors establishes an election office facility with more space for storing and processing ballots and easier access for the public.

REQUEST FOR RESPONSES

Pursuant to Penal Code Section 933.05, the Grand Jury requests responses from as follows:

From the following individual:

- Napa County Registrar of Voters: **R3, R4, R5, R6, R7, R8.**

From the following governing body:

- Napa County Board of Supervisors: **R1, R2, R9.**



A Tradition of Stewardship
A Commitment to Service

NAPA COUNTY GRAND JURY

2012-2013

JUNE 24, 2013

FINAL REPORT

A REVIEW OF NAPA COUNTY PUBLIC EMPLOYEE RETIREMENT BENEFITS

A REVIEW OF NAPA COUNTY PUBLIC EMPLOYEE RETIREMENT BENEFITS

Keep Calm and Carry On...

SUMMARY

In 1999, during a booming dot-com stock market, the California Legislature enacted SB400, which enabled generous and unprecedented retroactive pension enhancements to active public employees. Lawmakers and supporters called it “sharing the wealth”. The Wall Street Journal called it:

The largest issuance of non-voter-approved debt in the state’s history.

The timing could not have been worse. As the stock market began a precipitous decline, the value of pension funds on deposit declined 23 percent from a high of \$172 billion in early 2000 to \$133.8 billion in 2002. The California pension crisis was locked and loaded.

The 2007-2008 Napa County Grand Jury investigated the status of County employee retirement benefits and expressed serious concerns about the trajectory of funding for retirement obligations. That Grand Jury joined think tanks and other citizen grand juries in calling for reform of the California Public Employees Retirement System (CalPERS), the State’s manager of most public employee pensions and other post-employment benefits (OPEB), chiefly retiree health care.

The situation deteriorated further throughout the most recent recession as CalPERS’ portfolio return on investment (ROI) continued to plummet. In light of the protracted recession and slow recovery, the 2012-2013 Napa County Grand Jury decided to investigate and report on the present condition of the Napa County Employee Retirement Benefits.

As detailed below, the 2012-2013 Grand Jury finds that Napa County is in much better condition than the great majority of California counties. The Grand Jury recognizes the prudent decisions that the Napa County Board of Supervisors has made in the past and recommends that the County continue to opportunistically implement policy to improve the funding of the Napa County Employee Retirement Benefits System.

BACKGROUND

California Public Employees' Retirement System

Napa County contracts with CalPERS to provide retirement benefits for approximately 1,330 County employees and retirees. Created in 1932, CalPERS is the largest U.S. public-sector pension system, with over \$254 billion under management, providing benefits to 1.6 million public employees on behalf of over 3,000 public employers. By State law, CalPERS is an independent agency with sole authority to administer the retirement funds of contracting entities, to collect both employee and employer annual required contributions (ARC), to manage the investment of funds, and to conduct an annual actuarial valuation of each agency's funds in order to determine the benefit plan funded level:

$$\text{Benefit Plan Funded Level} = \frac{\text{total value of fund assets}}{\text{total accrued fund obligation}}$$

In addition, CalPERS has sole authority to determine the assumptions used to conduct these valuations, including projected ROI and lifespan estimates.

Vallejo's 2009 bankruptcy filing was viewed as a clarion call for reforming funding levels. At the bottom of the recession in June 2009, Napa County's retirement benefits funded level was just 60 percent, well below the 80 percent threshold considered by experts to be necessary for sustainable solvency.

The burgeoning economic recovery of late 2009 caused CalPERS' ROI to strengthen and thus its funded levels increased. In late 2012, thirteen years after SB400, the California Legislature enacted AB340, the Public Employee Pension Reform Act of 2013 (PEPRA). While falling short of fundamentally reforming public pensions, PEPRA mandated pension modifications that are expected to improve future funded levels. Napa County's funds rebounded faster than many California agencies. Before statewide reform, the County negotiated union agreements that reduced pension formula and increased employee cost-sharing. By June 2011, the latest data available, the County's retirement benefits funded level had improved to 73.8 percent. In addition, the County's prudent action to voluntarily pre-fund OPEB obligations on an aggressive schedule put the County on track to fully pay off this unfunded liability.

Funded levels are on a more sustainable path, but significant risk remains. CalPERS warned in March that the probability of its funds not falling below a 50 percent funding level, from which it would be difficult to recover, is only 50/50. Moreover, there are lessons to be learned from the last fifteen years' cycle of boom, bust, and now partial-recovery of California's public employee retirement benefit funds.

The 2012-13 Napa County Grand Jury investigation focused on identifying these "lessons". Because Napa County has by law only limited authority over retirement

benefits, special attention was given to identifying the actions of all California agencies that either aided the sustainability of funds, or contributed to the high-risk situation of virtually all funds just four years ago. Finally, despite the significant recovery, the total unfunded liability of \$173,965,000, or \$1,275 for every County resident, is one of the largest County liabilities and merits close citizen scrutiny.

Unfunded	Date	Amount	Census Napa Residents	Liability per Resident
OPEB Liability	6/30/2011	\$ 34,065,000	136,484	\$ 250
Pension Liability	6/30/2011	<u>\$139,900,000</u>	136,484	<u>\$1,025</u>
Totals		<u><u>\$173,965,000</u></u>		<u><u>\$1,275</u></u>

Napa County provides employees a defined benefit pension. This type of plan, which predominates in the public sector, specifies pension income, and allows the annual required contribution (ARC) to CalPERS to vary, primarily based on fund ROI. Defined contribution pension plans, rarely utilized in the public sector, are the well known 401 (k)-type of plans that allow pension income to vary while contributions are specified.

On an annual basis, CalPERS calculates the ARC that each agency must pay to meet pension plan objectives. Napa County has typically contributed roughly 75 percent of the ARC and its employees contributed the remaining 25 percent.

There are over 80 possible pension formulas established by California law that can be used by local agencies. Napa County has negotiated the following formulas for its safety employees (police and fire) and miscellaneous employees (all others):

	Tier	Safety	Miscellaneous	
	1	2%@50	2%@60	
	1-Enhanced	N/A	2.5%@55	
	2	3%@50	2%@60	
	3	3%@55	2%@62	
	4	2.7%@57	N/A	

Pension formulas express the percent of “final salary” earned each year of service and the age of full retirement, e.g., “Tier 1 Miscellaneous Formula of 2%@60”, means 2 percent of “final salary” is earned each year of service, and 60 is the “full retirement age”.

Other Napa County policies:

- Retiring before “full retirement age” reduces the pension.
- All employees must have 5 years of service to qualify for benefits.
- “Final salary” is either the highest single year’s, or the average of the highest three consecutive year’s regular and recurring salary, per negotiated Memorandum of Understanding (MOU).

Retirement benefits are a significant line item in the County budget. In FY2012-2013 the County portion of total employee pension costs is expected to be ~ \$19 million, about 19.9 percent of payroll and 4 percent of the overall County budget. This compares to the average share of state and local budgets devoting 6 percent to pensions, as reported by CalPERS.

METHODOLOGY

Interviews Conducted

- Napa County Chief Executive Officer
- Napa County Human Resource Director
- Napa County Financial Staff, Office of the County Executive Officer
- Napa County Board of Supervisor
- Napa Association of Public Employees, SEIU Local 1021
- Actuarial Consultant for Napa County

Documents Reviewed

- Recent Annual Actuarial Reports for all Retirement Benefit Plans of Napa County Employees
- 2010 Governor’s Report: Needed Public Employee Pension Reforms
- Text of PEPRA
- 2011 Little Hoover Commission Report: Public Pensions for Retirement Security

- Publications of grand juries, associations, commissions, universities and newspapers regarding the California Public Employee Pension Crisis (see Bibliography)
- Federal and local government reports on hybrid pension plans (see Bibliography)

DISCUSSION

Napa County leadership and staff have generally demonstrated a fiscally responsible and conservative approach to employee retirement benefit management, especially in the last eight years. For example, unlike other California public entities where compensation policies allowed certain public employees to collect more annual retirement income than they earned as salary, Napa County chose practices that prevented such abuses. The County's pension programs never allowed the "spiking" of final salaries with bonuses, unused vacation time, overtime pay and other non-regular compensation amounts.

In 2008, once the State Legislature approved the ability of local entities to prefund OPEB liabilities, the County was among the first in California to adopt this policy. At that time, the County adopted an aggressive 14-year pay-off schedule of the unfunded OPEB liability, although the amortization period was later increased to 20 years as part of the County's recession-induced contingency planning. The current schedule is still aggressive compared to other entities and is expected to enable OPEB funding to reach a 50 percent funded level before the end of 2013.

In FY2010-2011, a strong history of mutual respect and trust between the County and its employee bargaining units enabled agreement on lower pension formulas overall and pushed back the age of full retirement for some employee categories. County leadership and staff took these uncommonly assertive steps to improve the affordability and sustainability of retirement benefit programs more than a year before action on pension reform by the California State Legislature. These changes are projected to save the County over \$12 million within a decade after implementation.

The Grand Jury found that the County's prudent decision-making regarding retirement benefits has continued during the recovery of fund levels. In recent months the County Board of Supervisors abandoned an OPEB plan benefit that previously allowed County department heads and some elected officials to earn lifetime healthcare benefits. In addition, in April 2013, the County was one of the few in the State to pay the full CalPERS 1.1 percent ARC increase for 2013-2014 rather than phase it in over two years, which will result in further cost savings.

There is no doubt that Napa County's strong and stable economic climate has facilitated the ability to be proactive in managing all of its assets. The County is fortunate in that it is a relatively young public entity measured by the high number of active employees supporting the retirement income of retired employees, and has a high-valued land base

and well established agricultural and tourist commerce supporting tax revenues. Most importantly, the Napa County Board of Supervisors has a history of acting fiscally responsible in managing County assets.

Not every decision was so prudent, however. Ultimately, in FY2004-2005 the County acquiesced to State and employee pressure to provide the retroactive benefit enhancements of SB400, thus participating in what was termed the benefit “arms race” by California’s independent watchdog organization, the Little Hoover Commission. These enhanced benefits had already been adopted by most peer agencies in the State, and anticipating the need to match the benefits, the County had already established a side fund to mitigate looming increased costs. Additionally, in its negotiations with the unions, the County gained agreement to a trade off requiring employees to share any future changes in ARC, an action of great foresight. Even so, the impact of the new MOUs was dramatic and rapid. When combined with the nearly simultaneous downturn in the financial markets that saw CalPERS returns swing from a positive 10.5 percent return in FY2002-2003 to a negative 7.2 percent return in FY2003-2004, the result was a doubling of the County’s ARC payment for miscellaneous employees, from 6.9 percent of payroll to 13.9 percent of payroll. These significant investment losses, combined with enhanced unfunded retiree benefits, caused annual pension costs for the County to increase from \$7.5 million in FY2004-2005 to \$11.2 million in FY2005-06.

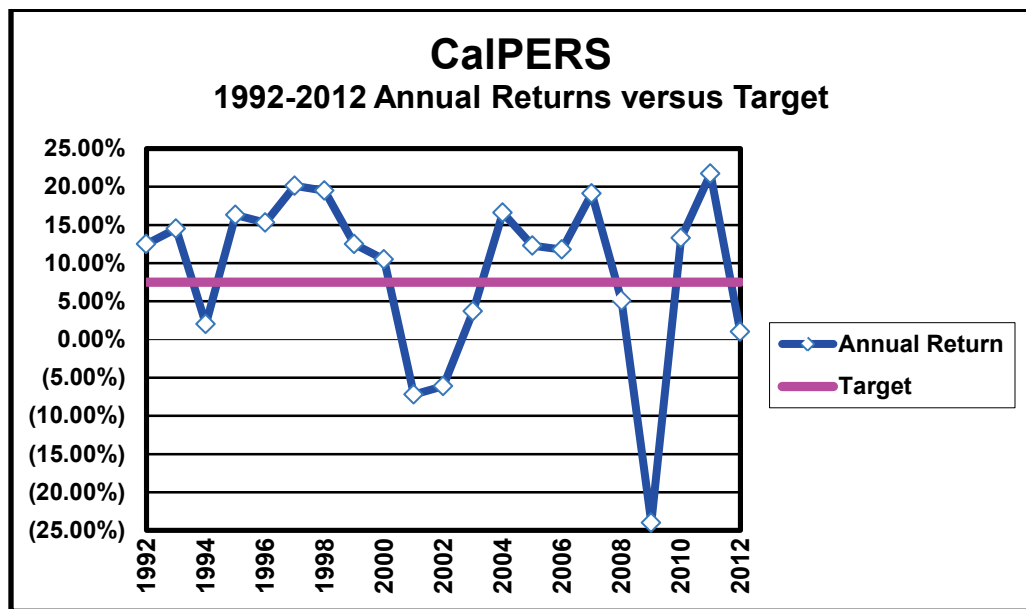
The Grand Jury found that the sustainability of OPEB programs is currently more of a concern to County officials than that of its pension programs. At the heart of County concerns are the steep increases in healthcare premiums, which have risen faster than the cost of living adjustments that affect pension funds. The Government Financial Officer’s Association (GFOA) recently published a report that detailed the challenging task of managing employee healthcare costs. In the report, the GFOA made several recommendations to public entities, noting the effectiveness of high-deductible and/or higher co-pay health insurance plans in reducing healthcare costs.

The challenge of local agency retirement benefit management: between a rock and a hard place

In many ways, the odds are stacked against local agencies with respect to their ability to manage retirement fund assets. There are two factors that impact the sustainability and affordability of pension and OPEB plans. First is the magnitude and certainty of benefits provided and the age at which employees can access the benefits. The Grand Jury found that these are somewhat controllable by public employers, although labor market competitive pressures are brought to bear such as existed after SB400. The State’s overriding authority over public pensions and the negotiating power of public employee unions often encourage negative local actions and/or restrain positive local action. CalPERS estimates that 15 percent of the State’s unfunded retirement benefit liability is the result of retroactive benefit enhancements enabled by the State and implemented by state and local agencies.

Secondly, and of even greater consequence, is the ROI of invested benefit funds, which is controlled by financial market conditions and CalPERS' investment choices. CalPERS' independent board of directors has unfettered authority to set ROI expectations that are used to value the funds and set ARCs. Because of compounding interest, CalPERS' benefit plans are structured such that 70 percent of planned future retirement dollars are to be generated from investment returns. Consequently, the County's prudent actions to improve funding levels, while exemplary, were eclipsed by the poor performance of CalPERS' investment portfolio. CalPERS' disappointing returns were further exacerbated by the impact of the Agency's overly optimistic ROI planning values. Over a five-year period, while the County increased its ARC payments by more than 20 percent, the funded level of the County's miscellaneous pension plan actually declined by 27 percent. CalPERS' ROI planning has been a major contributor to underfunding. It's easy to understand why: unrealistically high ROI projections by CalPERS results in lower required fund contributions, which reduces funded levels. CalPERS currently projects a 7.5 percent average annual return, a level which has been roundly criticized since the average ROI over the last ten years was 6.1 and for FY2011-2012 was just 1.0 percent.

CalPERS historical annual return vs. target



Increasingly unfunded levels of retirement benefit obligations will have a serious impact on the ability of public entities to continue to fund the public services demanded by their constituents. This is especially true for entities that do not have a growing tax base and/or do not have the ability to raise new tax revenues. The experience of the four California cities that have filed bankruptcy petitions, Vallejo, Mammoth Lakes, San Bernardino and Stockton supports this conclusion. Each of these cities experienced significant public sector layoffs as their financial condition worsened.

By 2015, several of the State's largest cities estimate that as much as 33 percent of their total operating budget will be consumed to make the annual required contributions to

CalPERS. Even Napa County, with a significant and stable economic base, no incidence of abusive pension practices, and no risk of bankruptcy has had to confront tough choices as the shortfall in funding of retirement obligations over the last decade has created larger and larger ARC payments to CalPERS.

Virtually all local agencies in California can expect their ARC's to continue to rise as a result of an announced major overhaul of CalPERS' investment policies, including planned reductions to CalPERS' discount rate (projected ROI) and changes to the actuarial methodology of smoothing (or averaging) investment gains and losses. While designed to level out big swings in ARC which are difficult for local agencies to accommodate, the current smoothing methodology extended the time to full funding of plans substantially, at one point to an untenable 30+ years.

These CalPERS methodology changes, which may also include a discount rate reduction, will be phased in over 5 years beginning in FY2015-2016, and could increase the ARCs of some public entities by as much as 50 percent.

The County's foresight in negotiating a 50/50 sharing of ARC changes with employees was indeed prescient. When these ARC increases are implemented, the County will not face the issues that may well cause other California entities to raise additional taxes, divert dollars from contingency funds, or reduce public services.

Doctrine of "vested rights"

The Grand Jury found that the application of the legal doctrine of an employee's individual "vested right" to promised retirement benefits, consistently upheld by the California courts, significantly limits the ability of local agencies to manage public pension and OPEB obligations. State courts have extended the doctrine to benefits that are not yet earned, thereby preventing the reduction or elimination of benefits even when the employer/agency is in dire financial condition.

Each of the four California cities that has sought federal bankruptcy protection since 2009 cited the inability to impair (reduce) retirement benefits as a major contributing factor in their financial collapse. Vallejo continued to make pension contributions throughout its 3 1/2 year bankruptcy while all other debts were subordinated. Ultimately, when confronted with the possibility that the federal bankruptcy court might impair pension obligations, Vallejo's unions accepted a \$100 million OPEB reduction.

Defined contribution and hybrid pension plans may not be the answer

Employee retirement benefits are guaranteed, thus defined benefit pension plans place the entire risk of investment losses on employers and by extension on taxpayers. It is not surprising that the pension crisis drove increased public interest in alternatives to defined benefit pension plans. Even Governor Brown advocated a hybrid pension approach when

he released his groundbreaking recommendations for reform of public pensions in 2011. A hybrid pension would combine a smaller defined benefit plan with a 401(k)-style defined contribution plan designed to make up the difference in planned total retirement income. Under continued pressure from unions, the State Legislature did not include a hybrid pension mandate in the final AB340 legislation. However, some entities, including the cities of San Diego and San Jose and the County of Orange have taken independent steps to hybridize their plan. In some cases, the entities have sought and achieved voter approval of these measures (San Jose and San Diego). Each of these entities has encountered union opposition and/or IRS regulation impediments to the implementation of the reforms. In addition, the Public Employees' Relations Board has opposed the ballot-approved hybrid plans and the matter is likely to go to court.

Defined contribution plans may not be a good choice for public pensions. In addition to the risk to retirement income security for the employee, numerous studies have identified the high cost of replacing an existing defined benefit plan with a defined contribution plan (for example, by law CalPERS would compel the immediate payoff of any unfunded liability) as well the increased ongoing cost of administering a defined contribution plan.

A study conducted in 2008 by the National Institute on Retirement Security concluded that the cost of providing retirement income is 46 percent lower in a defined benefit plan than in a defined contribution plan. Several factors influenced the finding:

- The tendency for individuals in defined contribution plans to shift more assets to lower yielding investments as they age
- The inability of individuals to pool mortality risks
- Differences in fees and average rate of return for individually managed accounts in defined contribution plans compared to professionally managed assets in defined benefit plans

The State (finally) acts to (partially) reform public pensions

The State of California, despite considerable citizen interest in fundamental reform of public pensions, has consistently retained legal authority for the Legislature and CalPERS to administer public employee benefit issues. In providing such little flexibility to local entities to manage these benefits, the State is substantially responsible for the pension crises of local entities over the last fifteen years.

After a failed attempt at pension reform in 2009 and subsequent protracted, partisan battles in the Legislature, a watered-down version of AB340 was enacted in late 2012. PEPRA falls short of the fundamental reform that could lower the risk of a repeat crisis, but has provided some needed support to local entities. Beginning in 2013, PEPRA mandates new tiers of lower benefits and increased employee pension cost sharing. The Act also limits pensionable compensation and eliminates spiking of final compensation

with non-regular compensation items. PEPRA also prohibits a previously common practice of entities taking a break or “holiday” from making annual contributions.

Because the Act did not allow the alteration of future unaccrued retirement benefits for current employees, the most significant PEPRA cost savings will be realized only as new employees are hired in the future. Napa County has implemented most of the changes in PEPRA, except for the provision that requires employees to pay at least one-half of the normal cost of their benefits, due to an existing MOU that expires in 2014. This cost sharing provision of PEPRA is the only opportunity for near term savings for the County, and the Grand Jury recommends that the County implement this provision of PEPRA at the negotiation of a new MOU next year.

A moving target?

On a cautionary note, there are several legal challenges to provisions of PEPRA working their way through State courts. If any of these challenges are successful, the subject provisions, or even the entire body of PEPRA legislation may be overturned. If this occurs, all of the State support for pension reform in local entities could evaporate. It is thus important that the County consider the Grand Jury’s Recommendations, even those that PEPRA currently shows promise to make unnecessary. Addendum A details the provisions of PEPRA and the status of the County’s implementation of the Act.

There are some other developments that could improve the ability of the County to manage its retirement benefit assets. The doctrine of public employee individual vested rights to retirement benefits could change as a result of bankruptcy proceedings involving Vallejo and Stockton. The Federal Judge involved in the Vallejo bankruptcy, in support of that city’s move to impair its OPEB obligations, declared:

While a state cannot make a law impairing the obligation of contract, Congress can do so.

Furthermore, the Federal Judge in the Stockton bankruptcy hinted that he might rule the city’s indebtedness to CalPERS does not merit preferential treatment as compared to other indebtedness. Such a final ruling would substantially erode the doctrine of an employee’s individual vested right and permit entities to correct their pension enhancement actions of the past.

CONCLUSION

Media reports on public employee retirement benefits have admittedly been colored by political considerations, but there are also broad areas of agreement. In 2011, the Little Hoover Commission summarized its view of the pension crisis in an often-quoted publication:

California's pension plans are dangerously underfunded, the result of overly generous benefit promises, wishful thinking and an unwillingness to plan prudently.

Likewise, Leigh Snell, the Federal Relations Director for the National Council on Teacher Retirement, in an article that cautioned against over dramatization of pension issues, noted:

If plan participants demand retroactive benefits that have not been adequately funded, or if employers fail to make their annual required contributions as agreed, then it is virtually inevitable that the plan's fiscal stability will become unbalanced over time.

The Grand Jury found that fixing public retirement benefits should be a non-partisan matter, since it is in every citizen's interest that public employees earn a retirement income adequate for their future needs and to which they sufficiently contribute while employed. There is a fairness issue as well. Many Napa County employees' retirement income security is totally dependent on the benefits earned from the County since they are not eligible to participate in Social Security. The Grand Jury found that the County has been collegial in proactively working with its employee bargaining units, CalPERS and citizens to make positive changes to its retirement benefit programs.

For the last eight years, the County has made a series of prudent decisions about its retirement benefits that have led to an increasingly funded, affordable and more stable retirement benefit status. Public officials have a responsibility to learn from past mistakes and be vigilant in the management of all County assets. In Napa County, there is strong evidence that this has been the case, and as it pertains to public employee retirement benefits, the County has shown very good stewardship.

FINDINGS

- F1.** Napa County never allowed the "spiking" of final salaries for pension benefit calculation, with one-time bonuses, unused vacation time and other extraordinary compensation items.
- F2.** In FY2004-2005, Napa County, like virtually all California entities, adopted retroactive enhanced pension formulas enabled by SB400. These benefit enhancements contributed to reduced funding levels.
- F3.** Subsequently, Napa County took assertive steps, ahead of the California State Legislature action on public pension reform, to reduce future County pension and OPEB liabilities.

- F4.** In FY2010-2011 the County adopted lower pension formulas for all employee categories.
- F5.** Napa County's strong and growing local economy has helped to maintain the affordability and sustainability of pension and OPEB benefit plans despite increasing ARCs.
- F6.** The most significant contributor to the growing levels of unfunded pension and OPEB liabilities is CalPERS' ROI, a factor that is not controlled by Napa County.
- F7.** Under the doctrine of "vested rights", pension and OPEB benefit formula reductions can only be applied to new employees; thus, such changes will do very little to reduce the County's unfunded liabilities in the next 10-15 years.
- F8.** Statutes and institutionalized policies have impeded progress toward reducing unfunded liabilities of retiree benefit plans. As a consequence, a single incident of imprudent management of retirement benefits, or unexpectedly negative investment returns, can have a long term negative impact on funding status of such liabilities.
- F9.** The concept of a hybrid pension plan has become more popular with taxpayers and has been approved by voters in some California entities. However, such plans face legal and logistical hurdles and may not be the most equitable and cost-effective method of providing retirement income security to public employees.
- F10.** Napa County has experienced steep increases in healthcare costs for both active and retired employees, which has contributed to the difficulty in managing OPEB funding.
- F11.** In late 2012, the State Legislature enacted the California Public Employee Pension Reform Act of 2013 (PEPRA), which has enabled CalPERS-contracting entities to reduce future post-retirement benefit obligations. Napa County is well along the path to the full implementation of PEPRA.
- F12.** PEPRA, combined with recent proposed changes to CalPERS's actuarial methodology and the potentially precedent-setting legal challenges to public employees' "vested right" to retirement benefits, show promise to provide improved capability of public entities to manage their retirement benefit obligations while still retaining qualified employees.

RECOMMENDATIONS

- R1.** Implement all PEPRA provisions as soon as practicable, but no later than at the time of adoption of the next memorandum of understanding (MOU) with the employee bargaining units.
- R2.** Maintain a maximum 20-year amortization of the unfunded OPEB liability in addition to funding all current obligations on a pay-as-you-go basis. Reduce the amortization period if an opportunistic funding mechanism develops.
- R3.** Develop plans to control future health care costs including the concepts advocated by the Government Finance Officers Association (GFOA) of accessing increased-deductible or higher co-pay insurance plans.
- R4.** Implement a side-fund to offset the risk of overly optimistic discount rate assumptions by CalPERS, if a budget surplus or another opportunistic funding source becomes available.
- R5.** Develop a plan to phase in the ARC changes that will result from recently announced CalPERS actuarial methodology and discount rate changes, as quickly as financially feasible.
- R6.** If favorable rulings result from federal bankruptcy proceedings concerning California jurisdictions, investigate freezing earned pension benefits of active employees who were beneficiaries of the SB400 retroactive formula enrichments and reset to the to the lower formulas in effect when the employees joined the County.

REQUEST FOR RESPONSES

Pursuant to Penal code section 933.05, the grand jury requests responses to all recommendations:

From the following governing body:

Napa County Board of Supervisors: R1-6.

GLOSSARY OF TERMS AND ACRONYMS

Annual Required Contribution (ARC): Annual required contribution is the amount the employer is required to contribute to a defined benefit pension fund annually, based on an actuarial formula, to fund current and future retirement benefits and liabilities. It is the amount needed to payout the benefits of future retirees.

CalPERS: California Public Employees Retirement System.

Discount Rate: The time value of money. On a yearly basis Pension plans utilize a discount rate to determine how much money needs to be invested in order to meet pension obligations in the future.

Defined Benefit: A promised specified monthly benefit upon retirement. Assets are held in a defined benefit plan (CalPERS) that assumes all investment risks.

Defined Contribution: Contributions are made by the employer to an individual employees investment account such as a 401k. All investment risks are those of the employee.

Hybrid Plan: Pension plan that combines components of both a defined benefit plan and a defined contribution plan.

MOU: Memorandum of understanding between employee bargaining units and employer.

OPEB: Other Post-Employment Benefits, mainly health care benefits.

PEPRA: Public Employees' Pension Reform Act (also referred to as AB340).

ROI: Return on investment.

Smoothing: Accounting and actuarial practice of spreading (averaging) investment gains and losses over a defined period of time. The purpose of smoothing is to minimize short term, year-to-year contribution rate fluctuations which can result from market swings. The smoothed asset value is the actuarial value of assets.

Unfunded Liabilities: Pension obligation and promises made for future benefits that are not matched by current assets.

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APPENDIX A

AB 340

The California Public Employees' Pension Reform Act of 2013 - PEPRA

This bill went into effect on January 1, 2013 and amends various provisions of the Public Employee's Retirement Law, Teacher's Retirement Law and County Employee's Retirement Law of 1937.

A new employee is an employee who first becomes a member of any public retirement system on or after January 1, 2013.

PROVISIONS	STATUS OF NAPA COUNTY IMPLEMENTATION
<p>Reduces Benefits Formulas and Increases Retirement Ages for New Employees</p> <p>Formula for non-safety miscellaneous members will be 2 percent at age 62 percent with a maximum of 2.5 percent at 67, early retirement possible 52 at 1 percent.</p> <p>Three formula options for safety members: 2 percent at 57, 2.5 percent at 57 and 2.7 percent at 57.</p> <p>CalSTRS has a new formula of 2 percent at 62 with a maximum of 2.4 percent at 65.</p>	<p>New Miscellaneous (non-safety) employees/members hired on or after January 1, 2013, have a new defined benefit formula of 2 percent at age 62 with an early retirement age 52 and maximum benefit of 2.5 percent at age 67.</p> <p>New safety employees/members hired on or after January 1, 2013 have a new defined benefit formula with a normal retirement of 2percent at age 50 and a maximum retirement formula of 2.7 percent at age 57.</p>
<p>Caps on Pensionable Compensation for New Employees</p> <p>For employees subject to Social Security, final compensation cannot exceed 100 percent currently at \$113,700. *</p> <p>Employees who do not participate in Social Security, final compensation cannot exceed 120 percent of that amount, currently at \$136,400. *</p> <p>This cap would adjust annually.</p> <p>* based on the 2013 Social Security Contribution & Benefit and Base</p>	<p>Income Caps:</p> <p>Caps the annual salary that counts towards final compensation for all new employees, excluding judges, at \$136,440. The compensation cap would adjust annually based on the CPI for All Urban Consumers.</p>

<p>Eliminate Replacement Benefit Plans for New Employees</p> <p>Would prohibit public employers from offering a plan of replacement benefits for new members.</p> <p>Final compensation for calculating retirement benefits will be based upon the highest average annual pensionable compensation earned by a member during a period of at least 36 consecutive months for all new employees/members hired on or after January 1, 2013.</p>	<p>Miscellaneous County employees already have this definition of final compensation; Safety employees hired before January 1, 2013, use the highest 12 months of compensation for retirement calculations.</p>
<p>Employee Cost Sharing for Current and New Employees</p> <p>Requires new members to pay at least 50 percent of normal cost, not to be paid by employer on employee's behalf</p> <p>Employee contributions for new members can be more than 50 percent if the increase has been agreed through collective bargaining.</p> <p>Revisions to Government Code section 20516 will provide greater flexibility for employers and unions to negotiate cost-sharing of the employer's contribution for both new and current members.</p>	<p>New Napa county Miscellaneous employees/members (non-safety) half the total current normal cost is 6.25 percent of salary and for new safety employees/members the rate is 11.5 percent.</p> <p>Employees represented by the Public Service Employees/SEIU and the Deputy Sheriffs' Association both have current labor agreements in place and will contribute the same as the current employee/members until the MOU expires or is amended at which point they will pay half the total normal cost.</p> <p>New management and confidential employees/members hired on or after January 1, 2013 contribute either (currently) 6.25 percent for non-safety or 11.5 percent for safety employees/members.</p> <p>Note: the Deputy Sheriffs' Association MOU expires September 30, 2013 and the SEIU MOU expires on June 30, 2014.</p>

<p>Limitations on Post Retirement Employment for Current and New Employees</p> <p>Limits all employees who retire from public service from working more than 960 hours or 180 days (non-safety retiree) per year for any public employer in the same retirement system from which the employee receives benefits.</p>	<p>Since January 1, 2013, Napa County has not hired a retired annuitant with less than an 180-day break in service since retirement. Retirees are hired based upon special skills needed by the County and are limited to working 960 hours in a fiscal year.</p>
<p>Three-Year Averaging for Final Compensation for New Employees</p> <p>Final compensation for calculating the pension benefit is determined by averaging highest annual compensation over a consecutive 36-month period, or 3 school years.</p> <p>Napa County currently has a minority of local agencies using a 3-year average, most use highest compensation over a 12-month period.</p>	<p>Miscellaneous County employees already had this definition of final compensation; safety employees hired before January 1, 2013, use the highest 12 months of compensation for retirement calculations.</p>
<p>Ban on "Air Time" Purchases for Current and New Employees</p> <p>Prohibits public retirement system purchase of non-qualified service credits, or air time, after January 1, 2013.</p>	<p>CalPERS has not accepted new applications for non-qualified service credit since December 31, 2012.</p>
<p>No Retroactive Benefit Increases for Current and New Employees</p> <p>Only service performed after the date the formula or benefit enhancement becomes operative may be credited at the enhanced level.</p>	<p>Napa County meets the new requirements of PEPRA.</p>
<p>No Pension Holidays for Current and New Employees</p> <p>A public employer's contribution plus the employee's contribution must equal the full normal cost for the plan year except under very limited circumstances</p>	<p>Effective January 1, 2013, Napa County meets the new requirements of PEPRA.</p>
<p>Forfeit Pension Benefits Upon Felony Conviction for Current and New Employees</p> <p>Requires public officials and employees to forfeit pension benefits if they are convicted of a felony related to the performance of official duties.</p> <p>Only pension benefits earned after the earliest of the commission of the felony are subject to forfeiture, not those earned prior to the commission of the felony.</p>	<p>Napa County has not had any officials or employees convicted of a felony.</p> <p>Should such a situation exist in the future, the retiree will forfeit any post-retirement benefits earned during County service after the commission of a felony.</p>