



81796

DATE: June 9, 2016

TO: Finance and Government Operations Committee

FROM: Jeffrey V. Smith, County Executive

SUBJECT: Organizational Structure for the County Jails and Oversight Models

RECOMMENDED ACTION

Receive report from the Office of the County Executive relating to organizational structure for the management and oversight of the County jail system and oversight models from other jurisdictions. (Under advisement from May 12, 2016 Finance and Government Operations Committee, Item No. 4).

FISCAL IMPLICATIONS

There are no fiscal implications associated with this informational report.

REASONS FOR RECOMMENDATION

At the May 12, 2016 Finance and Government Operations Committee meeting, the Committee requested information on the organizational structure for the management and oversight of the Santa Clara County jail system. The request specified the April 21, 2016 report written by the Office of the County Counsel, and that report is attached for the Committee's review.

The Committee also requested examples of oversight models in other county jails or state prisons, and oversight models used in police departments.

CHILD IMPACT

The recommended action will have no/neutral impact on children and youth.

SENIOR IMPACT

The recommended action will have no/neutral impact on seniors.

SUSTAINABILITY IMPLICATIONS

The recommended action will have no/neutral sustainability implications.

BACKGROUND

Organizational Structure for the Management and Oversight of the County Jail System

Prior to 1987, the jail system was operated by the Office of the Sheriff. Since that time, multiple actions occurred that created the Department of Correction (DOC) and later addressed challenges in staffing the newly-created DOC with arms-bearing officers. In 2010, the Board approved a new model that divided responsibility of the jail functions between the Sheriff's Office and the DOC. The attached report provides the details of DOC's history, as well as a context for how the County arrived at the existing organizational structure for the management and oversight of the county jail system.

Examples of Oversight Models

Included below in this report are several examples of State, County, and City law enforcement oversight models for the Committee's consideration. County Administration is providing information about a variety of models and is not recommending a particular model.

1. State of California – Office of the Inspector General (for the California Department of Corrections and Rehabilitation)
2. Office of the Ombudsman – California Department of Corrections and Rehabilitation
3. County of Los Angeles – Office of the Inspector General
4. County of Los Angeles – Civilian Oversight Commission
5. County of San Diego – Citizen's Law Enforcement Review Board
6. San Jose Police Department – Office of the Independent Police Auditor
7. San Francisco Police Department – Police Commission
8. Los Angeles Police Department – Office of the Inspector General

1. State of California - Office of the Inspector General

The mission of the Office of the Inspector General is to assist in safeguarding the integrity of the State's correctional system—in effect, to act as the eyes and ears of the public in overseeing the State's prisons and correctional programs. The OIG conducts system monitoring, and select reviews of policies, practices, and procedures of the California Department of Corrections and Rehabilitation (CDCR) on its own accord, or when requested by the Governor, the Senate Committee on Rules, or the Assembly. The OIG is also responsible for contemporaneous oversight of the CDCR internal affairs investigations, the employee disciplinary process, independent reviews of the healthcare delivery system at each of the State's 34 prisons, and for investigating the background and qualifications of potential adult State Prison Warden/Juvenile Justice Superintendent appointees submitted by the Governor.

The Office of the Inspector General was statutorily established in 1994 as an entity within the Youth and Adult Correctional Agency (since abolished) to conduct investigations, review policy, and conduct management review audits of wardens and superintendents that had held

his/her position for more than five years. In response to legislative hearings that revealed widespread abuse in the state's correctional system, in 1998 and 1999, the Legislature significantly expanded the Inspector General's responsibility for overseeing California's correctional agencies and transformed the Office of the Inspector General into an independent agency reporting directly to the Governor. In 2004, enacted legislation expanded the duties and strengthened the authority of the Office of the Inspector General. A series of legislative actions in 2011 further refined the statutory mandates of the Office of the Inspector General. The authority of the Office of the Inspector General can be found in Penal Code sections 2641 and 6125-6141.

The Office of the Inspector General is an independent governmental entity. The Inspector General is appointed by the Governor, subject to Senate confirmation. Statute provides the Inspector General with access to and authority to examine the records of the entities under the Inspector General's jurisdiction for any audit or investigation.

The Inspector General is required to maintain a toll-free public telephone number for the purpose of identifying any alleged wrongdoing by an employee of the California Department of Corrections and Rehabilitation. Information provided to the Office of the Inspector General is confidential. Identifying information and any personal papers or correspondence from any person reporting information to the Inspector General shall not be disclosed. Further, state law provide penalties for those who retaliate against anyone reporting misconduct to the Office of the Inspector General. The Inspector General is required by law to investigate retaliation complaints.

2. Office of the Ombudsman – California Department of Corrections and Rehabilitation

The Office of the Ombudsman is an office within the California Department of Corrections and Rehabilitation (CDCR). The office works independently and is an intermediary to provide individuals with a confidential avenue to address complaints and resolve issues at the lowest possible level. The Office proposes policy and procedural changes when systematic issues are identified.

The Office of the Ombudsman listens, answers questions, analyzes situations, explains CDCR policies and procedures, advocates for the fairness of a process as opposed to advocating for an individual party. The Ombudsman office also provides information and periodic advice, develops options, suggests appropriate referrals, apprises the administration of significant trends and from time to time may recommend changes in policies and procedures. It does not conduct formal investigations; does not change rules, policies or procedures; does not participate in any formal hearing or grievance process; does not supersede the authority of other CDCR officials; does not disclose and may not be required to

disclose information provided in confidence, except to address an imminent risk of serious harm where there is no other responsible option; and does not engage in any activity that might be perceived by others as advocacy for any individual.

The Office of the Ombudsman reports to the CDCR Undersecretary of Operations. Office staff includes a Chief Ombudsman and five Ombudsman.

3. County of Los Angeles – Office of the Inspector General

The Los Angeles County Board of Supervisors created the Office of the Inspector General by ordinance in August 2014. The OIG was created to provide independent and comprehensive oversight and monitoring of the Los Angeles County Sheriff's Department enforcement operations and its jail facilities. The Inspector General reports directly to the Board of Supervisors and makes regular reports to the Board on the Sheriff's Department's operations. Reports to the Board are public reports, except to the extent they relate to confidential personnel or otherwise privileged matters.

The OIG has four primary functions:

- 1) Monitoring the Sheriff's Department's operations, conditions in the jail facilities, and the Sheriff's Department's response to inmate and public complaints related to the Sheriff's Department operations;
- 2) Periodically reviewing the Sheriff's Department's use of force patterns, trends, and statistics, the Sheriff's Department's investigations of force incidents and allegations of misconduct, and the Sheriff's Department's disciplinary decisions;
- 3) Reviewing the quality of audits and inspections conducted by the Sheriff's Department and conducting its own periodic audits and inspections; and
- 4) Regularly communicating with the public, the Board of Supervisors, and the Sheriff's Department regarding the Sheriff's Department's operations.

As outlined in the establishing ordinance, the Inspector General is an attorney licensed by the State Bar of California. The Inspector General serves as special counsel to the Board of Supervisors and has an attorney-client relationship with the Board when requested by the

Board to provide privileged legal advice pertaining to a claim or lawsuit arising out of the actions of the Sheriff's Department or its personnel.

4. County of Los Angeles – Civilian Oversight Commission

In December 2014, the Los Angeles County Board of Supervisors approved the creation of a civilian oversight commission for the Los Angeles County Sheriff's Department to help restore public trust and promote transparency in the department. The board created a "work group," led by the Office of the County Counsel, to report back on recommendations for the oversight commission's mission, authority, size, structure and relationship to the offices of the Sheriff and Inspector General. The working group provided its report in June 2015. In January 2016, the Board approved a motion to create a Civilian Oversight Commission (Commission) for the Sheriff's Office.

The Commission provides opportunities for community engagement and ongoing analysis and oversight of the Sheriff's Department's policies, practices, procedures and advice to the Board of Supervisors, the Sheriff's Department, and the public. Its responsibilities include:

- Review, analyze, solicit input, and make recommendations to the Board and the Sheriff on the Sheriff's Department's operational policies and procedures that affect the community or make recommendations to create additional operational policies and procedures affecting the community and request a response from the Sheriff;
- Investigate, analyze, solicit input and make recommendations to the Board of Supervisors and the Sheriff on systematic Sheriff-related issues or complaints affecting the community;
- Review policy recommendations made by outside entities that were requested by the Board of Supervisors or the Sheriff or recommendations made in other reports and report to the Board of Supervisors or Sheriff on whether or not to implement the recommendation.
- Upon request of the Board of Supervisors and/or the Sheriff, serve, either collectively or through one or more of its members, as a monitor to assess implementation of settlement provisions in litigation matters;

- Function as a liaison, or at the request of community groups or organizations involved, serve as a mediator to help resolve ongoing disputes between the Sheriff's Department and members of the community or organizations within the County of Los Angeles.
- Obtain community input and feedback on specific incidents involving the use of force, detention conditions, or other civil rights concerns and convey to the Board of Supervisors and the Sheriff, community complaints, concerns or positive feedback, and where appropriate, make recommendations.
- Work with the Inspector General in soliciting community input and feedback on issues being investigated by the Inspector General.
- Function as a bridge between the Sheriff's Department and the community by providing the community an additional means of giving input to the Sheriff, obtaining answers from the Sheriff to community concerns about the Sheriff's Department's operations, practices and activities, bringing an additional perspective to the Sheriff's Department's decision-making.

The Commission has nine members: five members selected by the Board (one per Supervisor) and four community members. The Public Defender, Alternate Public Defender, District Attorney, and Presiding Judge shall each recommend a candidate to be considered for placement on the list of potential community commission members. The Board of Supervisors then appoints four community members to serve on the Commission.

Members must be residents of the County of Los Angeles. Individuals formerly employed in the criminal justice system may serve on the Commission. Current law enforcement personnel may not and must have returned to civilian status for at least one year prior to being eligible for candidacy on the Commission. Each member serves a three year term, and may not serve more than two full consecutive terms unless such limitation is waived by the Board of Supervisors.

5. County of San Diego – Citizen's Law Enforcement Review Board

In 1990, the voters in San Diego County approved a Charter Amendment establishing the Citizens' Law Enforcement Review Board (CLERB) and vesting it with subpoena power. The CLERB's mission is to increase public confidence in government and the accountability of law enforcement by conducting impartial and independent investigations of citizen complaints concerning Sheriff's Deputies and Probation Officers employed by the County of San Diego.

The ordinance was enacted in 1991 and CLERB's responsibilities are:

- Receive, review, and investigate citizen's complaints;
- Review and investigate peace officer related deaths in the jail or on patrol;
- Prepare reports on the results of any investigations including recommendations relating to the imposition of discipline;
- Prepare annual reports to the Board of Supervisors;
- Notify in writing any citizen who filed a complaint with CLERB of the disposition of his or her complaint;
- Establish rules and regulations for the conduct of CLERB business; and/or
- Review and make recommendations on policies and procedures of the Sheriff's Departments.

CLERB is comprised of 11 Board members. Candidates for Review Board membership must be registered to vote in San Diego County and have a demonstrated interest in public service. Candidates fill out an application form, are interviewed by County staff, and undergo a background check by the District Attorneys' Office. County employees and persons employed as peace officers are ineligible to serve. Applications are reviewed by the County's Chief Administrative Officer, who has discretion to nominate the candidate to the Board of Supervisors. The nomination is placed before the Board of Supervisors for a vote, and the successful candidate is appointed by the Board of Supervisors. CLERB members serve a three-year term for up to two consecutive terms.

6. San Jose Police Department – Office of the Independent Police Auditor

The Office of the Independent Policy Auditor (IPA) was established in 1996 as part of the Charter of the City of San Jose. The IPA provides independent oversight of the complaint process through an objective review of police misconduct investigations. The IPA is appointed by the San Jose City Council for a four year term, and is responsible for:

- Reviewing Police Department investigations of complaints against police officers to determine if the investigation was complete, thorough, objective and fair;
- Making recommendations with regard to Police Department policies and procedures based on the Independent Police Auditor's review of investigations of complaints against police officers;

- Conducting public outreach to educate the community on the role of the Independent Police Auditor and assisting the community with the process and procedures for investigation of complaints against police officers.

The IPA fulfills these responsibilities by reviewing police professional standards and conducting unit investigations of complaints against police officers to determine if the investigation was complete, thorough, objective and fair. The police auditor may also interview civilian witnesses in the course of the review of police professional standards. The IPA can make a request of the police chief for further investigation whenever the police auditor concludes that further investigation is warranted. The IPA also participates in the police department's review of officer involved shootings. Any community member can file a complaint against any member of the police department with the IPA.

7. San Francisco Police Department – Police Commission

The mission of the San Francisco Police Commission is to set policy for the Police Department and to conduct disciplinary hearings on charges of police misconduct filed by the Chief of Police or Director of the Office of Citizen Complaints.

Their responsibilities include imposing discipline in such cases as warranted, and hearing police officers' appeals from discipline imposed by the Chief of Police. The Commission is made up of 7 members, who are appointed by the Mayor and the Board of Supervisors.

8. Los Angeles Police Department – Office of the Inspector General

Under the City Charter, the Board of Police Commissioners is the head of the Police Department. The Board sets overall policy while the Chief of Police manages the daily operations of the Department and implements the Board's policies or policy direction and goals. The Office of the Inspector General's (OIG) role is to support the Board of Police Commissioners and the public by providing information and analysis regarding the conduct and performance of the Los Angeles Police Department (LAPD). The OIG functions as the eyes and ears of the Board of Police Commissioners.

The OIG is separate and independent from the LAPD. The OIG reviews investigations specific to all officer-involved shootings and significant uses of force that result in death or hospitalization, as well as complaint investigations of police officer misconduct. The OIG conducts its own performance-related audits, as well as other reviews.

The OIG is staffed by the Inspector General, and three Assistant Inspectors General responsible for Audits and Complaints, Special Investigations, and Use of Force.

- Audits and Complaints:

- Conducts performance audits and investigates complaints to determine if LAPD employees are following rules and procedures established in their Policy Manual and related directives;
- Assesses whether Department personnel are complying with existing policies and procedures and makes recommendations to both strengthen compliance and reduce risk;
- Reviews and investigates both the Department's and the community-based complaints of officer misconduct;
- Special Investigations
 - Conducts investigations, audits, inspections, and research into all aspects of the LAPD's operations.
 - Ensures the constitutionality of the policies and practices of the LAPD and its officers.
 - Ensures the preservation and institutionalization of Consent Decree reforms
 - Assessing compliance with Department policies and relevant state and federal law
 - Evaluates the integrity and effectiveness of the Department's accountability systems.
- Use of Force
 - Investigates and reviews all serious use of force incidents in real time, beginning with attendance at the scene of an incident through final adjudication;
 - Provides an independent written analysis of each incident.

CONSEQUENCES OF NEGATIVE ACTION

The Finance and Operations Committee and the Board of Supervisors would not receive this informational report on the organizational structure for management and oversight of the county jail system, and other oversight models throughout the state.

STEPS FOLLOWING APPROVAL

Forward to the Board of Supervisors as an informational item.

ATTACHMENTS:

- Organizational Structure for Management and Oversight of County Jails (PDF)

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MEMORANDUM

TO: Honorable Board of Supervisors

FROM: Orry P. Korb, County Counsel *OK*
Danny Y. Chou, Assistant County Counsel *DYC*
Laura Trice, Deputy County Counsel *LST*

RE: Organizational Structure for Management and Oversight of County Jails

DATE: April 21, 2016

This memorandum provides an overview of the organizational structure for the management and oversight of our County jail system. To provide context for the current structure, this memorandum first summarizes the history of the organizational structure of the County jail system before turning to the organizational structure now in place.

A. History of the Organizational Structure for Management and Oversight of County Jails

1. Creation of DOC and Transfer of Responsibility for Jail Operations from the Sheriff to DOC in 1987 and 1988

Before 1987, the County jails were operated by the Sheriff pursuant to the Penal Code.¹ In 1987, however, the Board of Supervisors (“Board”) created a Department of Correction (“DOC”)² to operate the County jails pursuant to Government Code section 23013. That provision permits a county board of supervisors, by resolution, to establish a department of corrections, headed by a board appointee, with “jurisdiction over all county functions, personnel, and facilities, or so many as the board names in its resolution, relating to institutional

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¹ See, e.g., Pen. Code, § 4000 (county jails are “kept” by sheriffs).

² DOC and the Chief of Correction have been given slightly different names throughout the years. For the sake of simplicity and consistency, this memo uses only “Department of Correction” and “Chief of Correction.”

punishment, care, treatment, and rehabilitation of prisoners, including, but not limited to, the county jail[.]”³

In June 1987, the County adopted a resolution establishing the Department of Correction, to be overseen by a Chief of Correction appointed by the Board. Soon thereafter, the Sheriff, the Deputy Sheriff’s Association of Santa Clara County, and Association President Tom Beck (collectively, the *Beck* plaintiffs) filed a lawsuit alleging that the resolution was invalid. The *Beck* plaintiffs argued, among other things, that the County violated state constitutional provisions by transferring powers and duties from an *elected* official (the Sheriff) to an appointed official (the new Chief of Correction).⁴

While the lawsuit was ongoing, the County addressed the alleged constitutional problem by placing a measure on the ballot to amend the County Charter (Measure A).⁵ Measure A was adopted by the electorate in June 1988 and added Section 509 to the County Charter. As adopted in 1988, Section 509 provided in relevant part:

“The Board of Supervisors shall establish a Department of Corrections and appoint a Chief Officer to operate the county jails for sentenced and unsentenced prisoners and to carry out such other functions of a Department of Corrections as the Board determines.”

“The Board shall ensure that there are at all times an adequate number of trained law enforcement personnel who are authorized to use firearms to guard and transport prisoners.”

“The Department of Corrections and Chief Officer thereof shall report directly to the Board of Supervisors.”

In September 1988, after the Charter had been amended, the Court of Appeal upheld the County’s establishment of DOC and the transfer of jail operations from the Sheriff to DOC.⁶ Following the Court of Appeal’s decision, a number of staffing issues remained unresolved, including who should supervise and be responsible for Deputy Sheriffs who had previously

³ In 1993, the Government Code was amended to require that the sheriff “take charge of and be the sole and exclusive authority to keep the county jail and the prisoners in it,” except in counties – such as the County of Santa Clara – in which the Sheriff was not the sole and exclusive authority over the jail as of July 1, 1993. Gov. Code, § 26605.

⁴ See *Beck v. County of Santa Clara* (1988) 204 Cal.App.3d 789, 793-94.

⁵ *Id.* at p. 792-93.

⁶ *Id.* at p. 793.

worked in County jail facilities under the Sheriff and had now been reassigned to DOC. To resolve these issues, the Sheriff agreed to allow Deputy Sheriffs reassigned to DOC to maintain their status as Deputy Sheriffs while serving as "Correction Deputies" at DOC. The County, in turn, adopted an ordinance clarifying that DOC had sole responsibility for supervision, direction, training, and appointment of such dual-status Deputy Sheriffs/Correction Deputies and other employees assigned to DOC.⁷

2. County Efforts to Address Challenges in Staffing DOC with Arms-Bearing Peace Officers

Despite the favorable ruling in *Beck* and the transfer of Deputy Sheriffs to DOC, the County encountered challenges in staffing DOC. These challenges arose from the need to staff the jail with enough "peace officers" authorized to carry firearms. Under state law, there must be at least one peace officer authorized to carry firearms on duty at any time 20 or more custodial/correctional officers are on duty.⁸ The County Charter further required the County to provide "an adequate number of trained law enforcement personnel who are authorized to use firearms to guard and transport prisoners."⁹ While a deputy sheriff is a "peace officer" authorized to carry firearms,¹⁰ a custodial or correctional officer is "not a peace officer" and lacks authority to carry firearms in the performance of his or her duties.¹¹

Although the Sheriff had agreed to maintain deputy sheriff/peace officer status for Deputy Sheriffs transferred to DOC, those employees retained the contractual right to transfer back to the Sheriff's Office when vacancies arose, and, over time, a substantial number had done so. As a result, DOC faced a shortage of peace officers in the early 1990s.¹²

To address this shortage, the Chief of Correction attempted to confer limited peace officer status on correctional officers employed by DOC.¹³ At the time, it was unclear whether a chief of correction had authority to confer peace officer status on correctional officers, and the Chief's actions resulted in another lawsuit, *County of Santa Clara v. Deputy Sheriffs'*

⁷ See Santa Clara County Ordinance No. NS-300.443; Santa Clara County Ordinance Code secs. A20-3, A20-41, subds. (b) & (d).

⁸ Pen. Code, §§ 831(d), 831.5(d).

⁹ See Santa Clara County Charter, § 509.

¹⁰ Pen. Code § 830.1(a).

¹¹ Pen. Code § 831(a)-(b).

¹² See *County of Santa Clara v. Deputy Sheriffs' Assn.* (1992) 3 Cal.4th 873, 876-77.

¹³ *Id.* at p. 877.

Association. In 1992, the lawsuit reached the California Supreme Court, which ruled against the County, holding that the Chief of Correction did not have authority to grant limited peace officer status to correctional officers.¹⁴

In 1993, after unsuccessful efforts to amend the Penal Code, the County attempted to address the peace officer shortage by placing DOC under the jurisdiction of the Probation Department,¹⁵ whose probation officers have limited peace officers status and may carry firearms in the performance of their duties.¹⁶ The Board placed DOC under Probation, renamed it the Bureau of Correction, and appointed the Chief Probation Officer as the Chief Officer of the Bureau of Correction. In 1996, the Court of Appeal rejected this action, holding that the Chief of Correction and Chief Probation Officer are incompatible offices that cannot be consolidated.¹⁷

Finally, in 1997, the County and the Sheriff's Office entered into a Memorandum of Understanding (MOU) to resolve the peace officer shortage.¹⁸ Under the MOU, inmate transportation and perimeter security functions were transferred to the Sheriff's Office, and the Sheriff agreed to appoint correctional officers to perform those functions under the Sheriff's direction.¹⁹ The Sheriff also agreed to staff 15 peace officer deputies at DOC.²⁰ All other correctional officers (those not assigned to the Sheriff to perform transportation and security functions) were transferred to the Sheriff's Office and immediately reassigned to DOC, apparently in an attempt to confer temporary and limited peace officer powers on these officers pending a legislative solution.²¹ In yet another lawsuit, however, the Court of Appeal held that the correctional officers transferred to the Sheriff under the MOU remained correctional officers and did not become deputized peace officers.²²

The MOU was intended to provide a temporary solution while the County attempted to secure an amendment to the Penal Code granting limited peace officer status to correctional

¹⁴ *Id.* at pp. 878-79.

¹⁵ See *People ex rel. Deputy Sheriffs' Assn. v. County of Santa Clara* (1996) 49 Cal.App.4th 1471, 1476.

¹⁶ Pen. Code, § 830.5(a).

¹⁷ *Deputy Sheriffs' Assn.*, 49 Cal.App.4th at pp. 1477-91.

¹⁸ See *Abbate v. County of Santa Clara* (2001) 91 Cal.App.4th 1231, 1235.

¹⁹ *Id.* at pp. 1235-36.

²⁰ *Id.* at p. 1236.

²¹ *Id.* at pp. 1236-37.

²² *Id.* at p. 1241-42.

officers, but the amendment was not enacted. Instead, in 1999, the Legislature amended Penal Code section 831.5 “to settle the issue of the “status” of the correctional officers which Santa Clara County will use within its detention facilities.”²³ The amendment confirmed that County correctional officers are *not* peace officers, but granted them the power to perform some peace officer functions, including arrest, search, and prisoner classification.²⁴ It also granted County correctional officers limited authority to carry firearms “under the direction of the sheriff . . . while engaged in transporting prisoners; guarding hospitalized prisoners; or suppressing jail riots, lynchings, escapes, or rescues in or about a detention facility falling under the care and custody of the sheriff[.]”²⁵

3. 2010 Reorganization of Jail Management and Oversight Authority

Until 2010, DOC continued to operate the jails and meet its peace officer staffing needs through the MOU. In the wake of the financial crisis, however, the Administration recommended transferring certain jail functions back to the Sheriff’s Office to eliminate duplicative functions and reduce costs.

The Administration recommended a “single-reporting model” that divided responsibility for jail functions between the Sheriff and DOC.²⁶ Under this model, the jail would “continue to be operated by the Chief of Correction, but in conjunction and cooperation with the Sheriff’s Office.”²⁷ As described in more detail below, this model transferred authority over all badge positions (including deputies and correctional officers) and many non-badge administrative staff to the Sheriff. DOC retained authority over non-badge staff in, and operations of, the Food Services, Administrative Booking, Inmate Laundry, and Warehouse units of the jail. The Board adopted these changes when it approved the 2010-11 budget, and they became effective July 1, 2010.

²³ *Id.* at p. 1237 (quoting Sen. Rules Com., Off. of Sen. Floor Analyses, Analysis of Sen. Bill No. 1019 (1999-2000 Reg. Sess.) May 12, 1999, p. 5); see also Pen. Code, § 831.5(j) (“It is the intent of the Legislature that this section, as it relates to Santa Clara and Napa Counties, enumerate specific duties of custodial officers (known as “correctional officers” in Santa Clara and Napa Counties) and to clarify the relationships of the correctional officers and deputy sheriffs in those counties.”). Section 831.5 was amended to include Napa County in 2014.

²⁴ Pen. Code, § 831.5(g).

²⁵ Pen. Code, § 831.5(b). This provision existed prior to the amendment, but did not apply to correctional officers employed by Santa Clara County.

²⁶ Memo from Jeff Smith to the Public Safety & Justice Committee re: Recommendations related to the Operational Plan for the Administrative restructuring of the Sheriff’s Office and Department of Correction at pp. 1-3 (June 2, 2010) (hereafter Smith Memo). A copy of the Smith memo is Attachment 2 to this memo.

²⁷ Smith Memo at p. 2.

Soon thereafter, a lawsuit was filed alleging that the reorganization violated the County Charter.²⁸ In settling the lawsuit, the County agreed to place a proposed Charter amendment on the ballot – which the voters approved in 2012. As amended in 2012, Charter Section 509 states in relevant part:

To continue to reduce the cost of operating the jails, to ensure that an adequate number of law enforcement personnel are authorized to carry firearms to guard and transport prisoners, and/or to provide flexibility to address changed circumstances, the Board may, by ordinance supported by a 4/5ths vote of the Board, convey jurisdiction over any or all jail operations to the Sheriff, to the Department of Correction, to any other department or agency that may lawfully exercise such jurisdiction, or to any of these entities jointly as the Board may determine.

Following the 2010 reorganization, the County supported efforts to amend Penal Code section 830.1(c), which granted peace officer status to deputy sheriffs of certain counties – but not Santa Clara – who performed exclusively custodial assignments in county jails. As a result of these efforts, Santa Clara County was added to section 830.1(c).²⁹ This enabled the Sheriff to employ deputies with peace officer status, known in the County as “correctional deputies,” to perform exclusively custodial duties in the jails. Following this amendment, the Sheriff conferred peace officer status on most correctional officers, who then became correctional deputies with the authority to carry firearms in the performance of their duties.

B. Existing Organizational Structure for Management and Oversight of County Jails

Under the model adopted by the Board in 2010, the Chief of Correction operates the jail in “conjunction and cooperation” with the Sheriff’s Office, and authority over personnel and jail functions is divided between DOC and the Sheriff’s Office.

DOC is headed by a Chief of Correction who reports solely to the Board. The Chief of Correction is responsible for the operations of the following jail units: Food Services, Inmate Laundry, Warehouse, and Administrative Booking. These first three units provide food and laundry services to inmates and are responsible for storage and stocking of supplies. The

²⁸ *Liddle v. Board of Supervisors of the County of Santa Clara* (Santa Clara County Super. Ct. No. 1-10-CV-179642).

²⁹ Pen. Code, § 830.1(c) (“Any deputy sheriff of the County of . . . Santa Clara . . . who is employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operations of county custodial facilities, including the custody, care, supervision, security, movement, and transportation of inmates, is a peace officer whose authority extends to any place in the state only while engaged in the performance of the duties of his or her respective employment and for the purpose of carrying out the primary function of employment relating to his or her custodial assignments[.]”).

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Administrative Booking unit handles booking of arrestees brought to the jail (i.e., fingerprinting, photographing, taking inventory of property), accepts payments for bail and for use in the commissary, and processes inmates for release (i.e., calculating release dates, checking for warrants and outstanding fines/fees, etc.). The Chief of Correction is the appointing authority for non-badge operational staff within these units, who report directly to DOC.

The Sheriff is responsible for all other jail staff and functions. The Sheriff is the appointing authority for all badge staff (including correctional deputies and correctional officers), Custody Support Assistants, and all non-badge administrative staff who do not report to DOC. The latter includes staff assigned to fiscal, information technology, professional standards, personnel training, detention services administration, public service program/weekend work program, detention screening and programs, analytical support, clerical support, and any other units not overseen by the Chief of Correction, including telephone services for inmates. In addition to other custodial duties, badge staff under the Sheriff are responsible for inmate classification. All of these employees report directly to the Sheriff's Office.

The Undersheriff reports directly to the Sheriff and is responsible for operational oversight of the entire Sheriff's Office, including its functions and staff in the jail. Although the current Undersheriff, John Hirokawa, also serves as the Chief of Correction, the two positions are separate and independent, and there is no requirement that they be held by the same individual.

The Sheriff's Office recently created a new Assistant Sheriff-Correctional Operations position dedicated to oversight of the Sheriff's operations in the jails.³⁰ Assistant Sheriff Troy Beliveau currently serves in this position. The Assistant Sheriff-Correctional Operations reports directly to the Undersheriff and assists the Chief of Correction in the daily operation of the jails. The Assistant Sheriff-Correctional Operations is responsible for the daily operations of the jail and overall control and security of inmates. The Assistant Sheriff-Correctional Operations may also act for the Chief of Correction as directed.

A current organizational chart for the Sheriff's Office and DOC is Attachment 1 to this memorandum.

Attachments:

- 1) Organizational Chart for the Sheriff's Office and Department of Correction, dated January 21, 2016
- 2) Memo from Jeff Smith to the Public Safety & Justice Committee re: Recommendations related to the Operational Plan for the Administrative restructuring of the Sheriff's Office and Department of Correction

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³⁰ See Job Specification, Assistant Sheriff-Correctional Operations (approved Sept. 29, 2015).

Office of the Sheriff

Organizational Chart
1/21/2016

Office of the Sheriff
Sheriff Laurie Smith

Board of Supervisors



Undersheriff
John Hirokawa

Chief
John Hirokawa

Public Information Officer
Sgt. James Jensen

Professional Compliance
Lt. Neil Valenzuela

Administrative Svcs -
Martha Wapenski

Enforcement -
Asst. Sheriff
Ken Binder

Custody and Services -
Asst. Sheriff
Troy Beliveau

Support -
Asst. Sheriff
Carl Neusel

Administrative Support

Information Systems
Juan Gallardo

Accounting Operations
Thuy Nguyen

Budget Management and Cost Accounting
Chwan-Fang Lee

Management Analysis/ Grants/Contracts/ IWF Management

Investigative Services *
Capt. Dan Rodriguez
Lt. Elbert Rivera
Lt. James Helms-RATTF

West Valley Patrol
Capt. Rick Sung
Lt. Robert Durr

Special Operations
Capt. Dalia Rodriguez
Lt. Marc Lehmann
Lt. William Middleton-Civil/Warrants

Transit Patrol
Capt. David Lera
Lt. Alfredo Alanis

HQ Patrol/Parks Patrol
Capt. Nuno Ribeiro
Lt. Shawn Francis -- ADC
Lt. Eric Bourassa-VMC
Lt. Mandy Henderson -- So. Co.
Lt. Troy Smith -- Watch Commander
Lt. James Cannan -- Watch Commander

Main Jail
Capt. B. Hoyt
Lt. Tim Davis-ADC
Lt. Ed Meyers--D Team
Lt. Enrique Borgzinner-C Team
Lt. Pat Corso-A/B Team

Elmwood
Capt. David Sepulveda
Lt. Eric Taylor-ADC
Lt. Adrienne Etheridge-CCW
Lt. Thomas Duran -C Team (WOOC)
Lt. Vic DeLaCruz-D Team
Lt. Vacancy-A/B Team

Administrative
Capt. Kevin Heilman
Lt. Kristen Tarabet-Transportation

Support Svcs
Capt. April McHugh
Lt. Kristen Tarabet-CASU
Lt. Frank Sepulveda-Classification

Compliance
Lt. Rita Roland-ADA

Food Services
Karen Candito

Inmate Laundry

Warehouse

Administrative Booking/Records
Michelle Covarrubias

Stanford University
Capt. Frank Zacharisen

Medical Examiner-Coroner
Capt. William Oberst
Lt. Julian Quinonez

Court Security
Capt. Ricardo Urena
Lt. Thea Lera

Personnel and Trng
Capt. Michael Doty

Backgrounds/ Reserves
Lt. Chris Grumbos

Personnel
Christine Goodson

Training/Academy
Lt. Jose Cardoza

* Safe
Human Trafficking
Notario Fraud
Narcotics
Regional Enforcement Allied Computer Team

County of Santa Clara

Office of the County Executive

70 West Hedding Street
San Jose, California 95110-1721
(408) 299-5102

Jeffrey V. Smith
County Executive

June 2, 2010

To: Supervisor George Shirakawa, Chairperson
Supervisor Donald F. Gage, Vice Chair
Public Safety & Justice Committee

From: Jeffrey V. Smith, County Executive 

Re: Recommendations related to the Operational Plan for the Administrative restructuring of the Sheriff's Office and Department of Correction

Introduction

Since the creation of the Department of Correction, changes in the law and the effect of numerous court decisions have made the implementation of the 1987 Charter amendment difficult as it relates to providing for peace officer status. There is a Memorandum of Understanding (MOU) between the Sheriff and the County that is intended to ensure that there are a sufficient number of gun-bearers per Charter section 509 and the Penal Code. (attached). This MOU is no longer serving its original purpose.

In addition, administrative and oversight functions are duplicative between the two departments, and resources in these areas may be reduced without reducing service.

I recommend that the County adopt the use of a single reporting model, as outlined below, to best comply with Charter Section 509, which states "The Board shall ensure that there are at all times an adequate number of trained law enforcement personnel who are authorized to use firearms to guard and transport prisoners."

This memorandum includes information about an operational plan related to an administrative restructuring of the Sheriff's Office and the DOC, and contains the following components:

- Recommended Operational Model for Authority
- Operational Solution in the Recommended Budget and Alternative Plan Proposed by DOC

- Operational Plan
- Bargaining Unit Discussions
- Historical Context for Authority Issues
- Conclusion

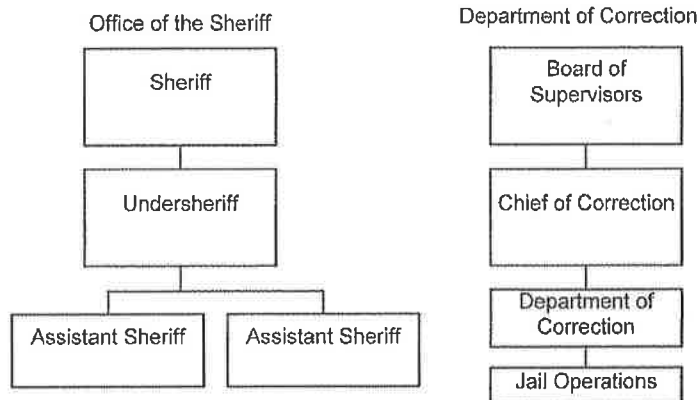
Recommended Operational Model for Authority

In the single reporting model,

1. The Chief of Correction reports solely to the Board of Supervisors.
2. The Sheriff's Office and the DOC work in conjunction/cooperation regarding the daily jail functions. This plan complies with section 509 of the Charter in that the jail will continue to be operated by the Chief of Correction, but in conjunction and cooperation with the Sheriff's Office.
3. The Sheriff is the appointing authority for the following classifications and units, and the employees in these classifications and units report directly to the Sheriff's Office:
 - a. Badge positions including Correctional Captain, Correctional Lieutenant, Sheriff Correctional Sergeant, and Sheriff Correctional Officer.
 - b. Custody Support Assistants.
 - c. Non-badge administrative staff including those assigned to fiscal, information technology, professional standards, personnel, training, detention services administration, public service program/weekend work program, detention screening and programs, analytical support, and clerical support, and all others not assigned to the units specifically reporting to the Chief.
4. The Chief of Correction is responsible for the jail operations listed on page 3. The Chief is the appointing authority for specified non-badge operational staff in the jail units listed below, and the employees in these units report directly to the Department of Correction:
 - a. Food Services, Administrative Booking, Inmate Laundry, and Warehouse.

Approved

SINGLE REPORTING MODEL



All badge, CSA, and non-badge administrative employees: fiscal, IT, professional standards, personnel, training, detention services administration, analytical support, clerical support, PSP/WWP, Inmate Programs, Inmate Screening,

Food Services, Administrative Booking, Inmate Laundry, Warehouse,

Operational Solution in the Recommended Budget and Alternative Plan Proposed by DOC

My FY 2011 Recommended Budget contains an operational solution for savings within the Sheriff's Office and the Department of Correction. The departments would be administratively restructured through the integration of like-services, such as Personnel, Internal Affairs, and administrative functions. Implementing the plan creates ongoing savings in the amount of \$5.4 million by reducing duplicative services in both departments, and implementing efficiencies within DOC.

Following the publishing of the Recommended Budget, the DOC submitted a plan on May 20, 2010 at the Budget Workshop as follows:

Description	Amount	Positions
Close M3 – delete 5 Sheriff Correctional Officer posts	\$3,118,225	23
Delete 0.5 post at Elmwood Minimum Camp	\$271,150	2
Cancel FY 2011 Academy	\$1,253,903	
Reduce Food Budget	\$400,000	
Delete Captain	\$232,896	1
Delete Executive Assistant	\$88,524	1
Total:	\$5,364,698	27

Approved

This alternative plan also included two reductions that were already part of the Recommended Budget: cancel the academy and reduce the food budget. Therefore, the actual proposed savings were approximately \$3.7 million, not \$5.36 million. Also, according to the transmittal, the plan eliminates security positions due to the reduced inmate population. This means when the inmate population increases, the DOC would have to return to the Board to add back positions, creating an additional ongoing expense to the General Fund. Though this reduction is possible at the current time, it is dependent on inmate population levels of 3,800 – 4,000. In light of fluctuations in inmate population, as well as the potential for the State to send State prisoners to counties in the future, the likelihood of the DOC approach to be ongoing is low.

The operational solution in the Recommended Budget does not rely on the reduced inmate population to save money, but rather generates savings from the elimination of duplicative functions and implementation of new efficiencies. If the Board selects the alternative plan submitted by the DOC, there would be no change in the operational structure of the DOC, and therefore no elimination of duplicative functions. This clearly means that the Sheriff’s Office would need to retain the existing management oversight positions by adding back the Sheriff’s Office Captain and Lieutenant that were reduced as part of the Recommended Budget.

Operational Plan

At the May 20, 2010 Budget Workshop, the Board requested detailed information on the operational solution presented in the Recommended Budget. After an analysis of duplicative functions between the two departments, and a review of where efficiencies can be implemented, the County Executive’s Office focused on the following key areas for reductions:

Inmate Classification

The classification unit is one area where we strongly feel reductions can be made without detrimentally affecting the function. A review of counties with comparable inmate populations illustrates that the basic classification process of inmates does not require the staffing levels that currently exist in this unit.

County	Avg Daily Population	Capacity	Positions	
Alameda County	4,400	4,900	28	
Sacramento County	4,010	4,432	9	
Santa Clara County DOC	3,860	5,430	Before the cuts: 40	After the cuts: 32

Alameda County has the only jail system in the Western United States certified by the Commission on Accreditation for Law Enforcement Agencies, Inc (CALEA). Their jail system has a daily population of approximately 4,400 with a total capacity of 4,900 inmates. Alameda County has 28 FTEs assigned to classification. Sacramento County has an average daily population of 4,010 and a capacity of 4,432 inmates. Their classification unit has a total of nine FTEs assigned. By contrast, Santa Clara County has a daily jail population of around 3,860 with a total capacity of 5,430 inmates. There are 40 FTEs assigned to inmate classification. Operationally, the deletions included in the Recommended Budget are:

- 1 Correctional Sergeant— This position is assigned to administrative responsibilities and the function can be assumed by the lieutenant in classification.
- 6 Correctional Officers - There are currently two assigned per team at Elmwood. This could be reduced to one per team. The other two deletions would come from the two officers assigned to population bed management. This function can be performed by the classification sergeant assigned to the various shifts.
- 1 Law Enforcement Clerk - With fewer classification staff to support, there would not be a need to retain current level of 9 clerical support positions.
- 1 vacant Administrative Assistant position - This position was recently moved from Operations to Classification, so there is no impact with this deletion.

Internal Affairs

The Recommended Budget calls for the deletion of a Sheriff's Correctional Officer position assigned to Internal Affairs. This position is responsible for handling subpoenas, court order requests, CJIC security and other related tasks. These functions can be civilianized, and assigned to existing staff within the DOC and Sheriff's Office.

Professional Compliance and Audit

The Recommended Budget includes the deletion of two positions: Sheriff's Correctional Sergeant and Sheriff's Correctional Officer. The positions are responsible for policy research and development, as well as coordination and response to annual inspections. In the Sheriff's Office, these functions are assigned to a variety of management staff as a collateral duty in addition to their regular responsibilities. Policy updates can be completed as part of the regular weekly command staff meetings, with recommendations from operational staff.

Correctional Lieutenants

The recommended budget calls for the deletion of six Correctional Lieutenants: one from Internal Affairs, one from Personnel, two from Elmwood, and two from Main Jail. For Internal Affairs and Personnel, the Sheriff's Office has command staff overseeing

those functions already, which eliminates the need for duplicative management. The command staff within the Sheriff's Office would then increase their span of control to provide oversight to the DOC staff performing these functions.

The four remaining Lieutenants assigned to Main Jail and Elmwood are responsible for watch commander duties. After a review, it was recommended that two lieutenants can be deleted from each facility by adjusting the hours of the remaining four watch commander Lieutenants. Currently on duty during the day are Assistant Division Commanders. These positions are Lieutenants who oversee the sergeants in each facility during the day-to-day operation. The Assistant Division Commanders can be assigned watch commander duties during the day, and the remaining four watch commander Lieutenants would be scheduled to cover the non-business hours and weekends. In addition, currently there are two watch commanders on duty at all times, one at each facility. Under the operational solution, one Lieutenant can cover both jails easily, because the response time to incidents is seven minutes from one facility to the other.

Administrative Services

The Recommended Budget contains certain oversight and administrative support functions that can be combined to reduce redundancies, resulting in the deletion of certain positions.

- Assistant Chief/Executive Assistant/Office Specialist positions – Management oversight under both the Single and Dual Reporting models can be reduced, as part of the budgetary savings under the operational solution.
- Program Manager I – This position is responsible for Public Information Officer duties and Health Injury Prevention (HIP) activities. Those functions can both be absorbed by existing staff in the Sheriff's Office who are assigned to these functions.
- Management Analyst – This position is responsible for management analysis activities in support of administration and Inmate Welfare Fund management. These duties can be transferred to remaining management analysis staff in the DOC and Sheriff's Office.
- Senior Correctional Training Specialist/Two Correctional Officers (Training) – These positions are assigned to training activities and tracking for the DOC. By restructuring training staff and resources within the Sheriff's Office, and retaining the clerical support in DOC, the Sheriff's Office can absorb this training function. Another area where redundancy can be eliminated is the automated training tracking systems.

Jail Operations

The Recommended Budget contains certain jail operation functions that can be streamlined to create efficiencies, resulting in the deletion of certain positions.

- In the Recommended Budget for DOC, the department submitted a reduction plan for the Operations unit, which is responsible for facility maintenance department-wide. As part of the operational solution, the deletion of 1 additional Supervising Custody Support Assistant would leave one supervisor for both facilities. Management of that unit would be split between the two facilities.
- Currently, four Sheriff's Correctional Officers and one Sheriff's Correctional Sergeant are assigned to administrative responsibilities full-time, and are responsible for facility safety and compliance. These duties can be absorbed by two remaining safety and compliance officers.
- There is one administrative Sheriff's Correctional Sergeant assigned to the Correctional Center for Women (CCW), and is responsible for women's programs. These duties can be performed by the Lieutenant assigned to CCW.

Sheriff's Office Staff

The operational solution in the Recommended Budget also calls for the deletion of Sheriff's Office staff, in furtherance of reducing redundant services.

- Sheriff's Captain and Sheriff's Lieutenant – Currently, these positions are responsible for upholding the Sheriff's authority over the employees in the jail, and are part of the current MOU between the County and Sheriff's Office. These positions would be unnecessary under the Dual and Single Authority models.
- Two Sheriff's Correctional Officers are assigned to inmate transportation duties. Through streamlining the operation and increasing efficiencies, analysis showed that two positions could be deleted.

Bargaining Unit Discussions

Deputy Sheriffs' Association (DSA)

The DSA is supportive of the administrative restructuring of the DOC and Sheriff's Office. There was one concern raised by the DSA regarding maintaining the separation between the two bargaining units, DSA and CPOA. This issue has been addressed to DSA's satisfaction by Luke Leung, Deputy County Executive.

Correctional Peace Officers' Association (CPOA)

In our communication with the CPOA, they identified concerns, which have been addressed in a side letter which is attached to this memorandum. CPOA is supportive of the County Executive's recommendation relative to the Sheriff's Office and the Department of Correction changes.

County Employees Management Association (CEMA)

A number of areas proposed to be consolidated affected employees represented by CEMA. We have completed meet and confer with CEMA on the impact of any budgetary changes to its members in both the Sheriff's office and the department of Correction, and there are no areas of disagreement noted.

Historical Context for Authority Issues

In 1987, the Board of Supervisors adopted a resolution creating a "Department of Detention" to operate the jail instead of the Sheriff. The Board intended that the Department of Detention have jurisdiction over all County functions, personnel and facilities relating to the punishment, care, treatment and rehabilitation of inmates, and the resolution specifically provided that the new Chief "shall have power to appoint, supervise, suspend, or remove all assistant, deputies, clerks and other employees *in the Department.*"¹

At the same time the Board adopted this resolution, it also amended the County Ordinance Code, detailing how the Department would be operated, including specifying the duties of the newly created Chief and the Chief's jurisdiction over all personnel.² These actions were taken following cost-overruns by the Sheriff. The Board undertook the creation of the Department of Detention, subsequently renamed the Department of Correction (DOC), based on the premise that the jail could be operated for less money by using less costly custodial officers rather than peace officers/deputy sheriffs. At the time, the requirement to have personnel at the jail with peace officer status was not well understood, so this issue was not fully considered when cost savings were calculated and when the overall vision of the new structure was discussed and considered by the Board.

Following the adoption of the resolution and Ordinance Code provisions creating the DOC, Deputy Sheriffs Association President Tom Beck sued the County to force the County to return control of the jail to the Sheriff.³ In part, Beck argued that the County had impermissibly removed duties (operating the jail) from a sitting elected official that the voters had elected that official to do. In 1988, while *Beck v. County of Santa Clara* was pending, the Board placed "Measure A" on the ballot, asking voters to adopt County Charter section 509 in order to cure the alleged defect raised by Beck, *i.e.*, that only

¹ Emphasis added.

² County Ordinance Code § A20-38 et seq.

³ *Beck v. County of Santa Clara* (1988) 204 Cal.App. 3d 789.

voters could remove powers from an official that the voters had elected.⁴ Section 509, as relevant here, currently provides as follows:

The Board of Supervisors shall establish a Department of Corrections and appoint a Chief Officer *to operate the county jails for sentenced and unsentenced prisoners* and to carry out such other functions of a Department of Correction as the Board determines.

- The Board shall ensure there are at all times an adequate number of trained law enforcement personnel who are authorized to use firearms and to guard and transport prisoners.
- The savings of public funds generated by creation and operation of the Department of Correction shall be used for other essential governmental services.⁵
- The Department of Correction and Chief Officer thereof *shall report directly to the Board of Supervisors.*

The authors of the argument in favor of Measure A asserted that it would save the taxpayers \$62,000,000 over ten years, put deputy sheriffs back on the street patrolling where their real skills could benefit the community, and stated that the authors were tired of the political fight over the jails and wanted to use the savings from the creation of the DOC on better roads and improved health services for seniors and children. These same authors wrote the rebuttal to the argument against Measure A, highlighting the following points:

- Measure A creates a professional Department of Corrections [sic] to run our County jails.
- Under a professionally managed Department of Corrections [sic], excessive overtime pay will be cut back and rapidly increasing budgets brought back into line. Maybe that's why the Deputy Sheriff's Association opposes Measure A.
- The fact is that right now the Sheriff can only put one patrol car on the streets during the midnight shift to cover large parts of the County. We should care more about the safety of people who are paying taxes than the people who are paying for their crimes. Yet we have about 400 deputies, trained for patrol, assigned to the jail.

⁴ The Court of Appeal decided *Beck v. County of Santa Clara, supra*, 204 Cal.App.3d 789, following the passage of Measure A and held that approval of the Measure successfully rendered Beck's argument moot. *Id.* at p. 792-794.

⁵ The County Auditor's statement of the fiscal impact, as published in the sample ballot and voter information pamphlet, predicted that adoption of the proposed Charter section would "result in a first year savings of \$3,054,000; a five year cumulative savings of \$22,556,000; and a ten-year cumulative savings of \$62,631,000."

- Measure A will employ Correctional Officers to staff the jail

County Counsel's impartial analysis of Measure A explained to voters that California law allows a board of supervisors "to establish a department of corrections and to appoint a chief officer with jurisdiction over county jail functions, personnel and facilities." The analysis then stated that on June 25, 1987, the Board of Supervisors established a Department of Detention to operate the County's jail facilities and that Measure A "would further these actions by recognizing the department of corrections and its chief officer in the County Charter and by providing for their functions and reporting responsibilities."

Measure F, a competing ballot measure designed to ensure the Sheriff retained control over the jail, was placed on the ballot in the same election that Measure A was placed before the voters. County Counsel's impartial analysis of Measure F explained the Board's 1987 creation of the DOC pursuant to Government Code section 23013, while noting that a vote for Measure F would undo the Board's 1987 action:

- California Government Code Section 23013 gives counties the option to establish a department of corrections and to appoint a chief officer with jurisdiction over county jail functions, personnel and facilities. In accordance with this provision, the Board of Supervisors on June 25, 1987 established a Department of Detention to operate Santa Clara County's jail facilities and subsequently hired its chief officer.

This measure would amend section 501 of the Charter of the County of Santa Clara to provide that all county jail and detention facilities, personnel and inmates (excluding work furlough and juvenile facilities and staff) shall be under the exclusive control of the Sheriff and not under the department of corrections or detention. The legal affect of this measure would be to invalidate the Board of Supervisors' prior actions establishing a Department of Detention, vest exclusive jurisdiction of the county's jail operations in the Sheriff and prevent the Board of Supervisors from exercising the authority granted by Government Code section 23013 in the future.

Measure A was adopted by the voters and Measure F failed. In addition to placing Measure A on the ballot in 1988, the County also amended the County Ordinance Code in December of 1988 to change the title of the new department to the "Department of Correction," as well as to add section A20-3, transferring deputy sheriffs to the DOC, providing them with dual status as both deputy sheriffs and DOC correctional officers, but subjecting them to the authority of the

newly created Chief of Correction.

After the voters' approved Measure A, the Court of Appeal issued its decision in *Beck v. County of Santa Clara* upholding the County's actions creating the DOC. The court found that "the transfer of authority over the county jail" was authorized under Government Code section 23013. As part of his argument against the transfer, Beck relied on a string of Penal Code sections specifying a sheriff's statutory duties relating to the receipt, care and guarding of unsentenced prisoners to assert that section 23013 only conferred jurisdiction over sentenced prisoners and that the County would need to establish two jails; one for sentenced offenders run by the DOC and one for unsentenced inmates run by the Sheriff. The Court of Appeal rejected this argument, instead finding that "section 23013 was intended as an alternative statutory scheme to be adopted as a local option."⁶

Conclusion

This operational plan is the first step in eliminating redundant services and identifying operational efficiencies. If the plan is approved by the Board, the County Executive's and Sheriff's Office staff will continue to analyze of duplicative functions, such as Fiscal and Information Technology. Also, budget and overtime issues will be reviewed in-depth, and recommendations will be developed.

The Recommended Budget saves \$5.4 million from the elimination of duplicative services and implementation of new efficiencies. This operational plan maintains the integrity of the amendment to the County Charter passed by the voters of Santa Clara County in 1988, and allows the Board of Supervisors to modify this plan at any time in the future.

⁶ *Id.* at p. 802.

**CHARTER
OF THE
COUNTY OF SANTA CLARA
STATE OF CALIFORNIA**

Revised October 19, 2009

**COUNTY CHARTER EFFECTIVE:
July 11, 1976**

AMENDMENTS:

November 7, 1978
November 4, 1980
November 2, 1982
November 4, 1986
June 7, 1988
November 8, 1988
November 6, 1990
June 2, 1992
November 2, 1993
March 26, 1996
November 5, 1996
June 2, 1998
November 3, 1998
March 2, 2004
June 6, 2006

**MEMBERS
OF THE
SANTA CLARA COUNTY
BOARD OF SUPERVISORS**

DONALD F. GAGE
District 1

GEORGE SHIRAKAWA
District 2

DAVE CORTESE
District 3

KEN YEAGER
District 4

LIZ KNISS
District 5

COUNTY EXECUTIVE
Jeffrey V. Smith

ACTING COUNTY COUNSEL
Miguel Márquez

CLERK OF THE BOARD
Maria Marinos

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Approved

Section 508. The Board of Supervisors shall establish pursuant to Section 506 a county planning commission. The ordinance shall prescribe the powers and duties of the commission. Nothing in this section shall preclude the Board of Supervisors from exercising the power granted in Section 302(a) of this Charter.

Section 509.⁹ The Board of Supervisors shall establish a Department of Correction and appoint a Chief Officer to operate the county jails for sentenced and unsentenced prisoners and to carry out such other functions of a Department of Correction as the Board determines.

The Board shall ensure that there are at all times an adequate number of trained law enforcement personnel who are authorized to use firearms to guard and transport prisoners.

The savings of public funds generated by creation and operation of the Department of Correction shall be used for other essential governmental services.

The Board shall honor the Memorandum of Understanding between the Deputy Sheriff's Association, Inc. of Santa Clara County and the County, effective September 21, 1987, and shall engage in good faith negotiations for successor memoranda. The Department of Correction and Chief Officer thereof shall report directly to the Board of Supervisors.

⁹ Section 509: Added and ratified by the Voters June 7, 1988.

California Penal Code

831.5. (a) As used in this section, a custodial officer is a public officer, not a peace officer, employed by a law enforcement agency of San Diego County, Fresno County, Kern County, Stanislaus County, Riverside County, Santa Clara County, or a county having a population of 425,000 or less who has the authority and responsibility for maintaining custody of prisoners and performs tasks related to the operation of a local detention facility used for the detention of persons usually pending arraignment or upon court order either for their own safekeeping or for the specific purpose of serving a sentence therein. Custodial officers of a county shall be employees of, and under the authority of, the sheriff, except in counties in which the sheriff, as of July 1, 1993, is not in charge of and the sole and exclusive authority to keep the county jail and the prisoners in it. A custodial officer includes a person designated as a correctional officer, jailer, or other similar title. The duties of a custodial officer may include the serving of warrants, court orders, writs, and subpoenas in the detention facility or under circumstances arising directly out of maintaining custody of prisoners and related tasks.

(b) A custodial officer has no right to carry or possess firearms in the performance of his or her prescribed duties, except, under the direction of the sheriff or chief of police, while engaged in transporting prisoners; guarding hospitalized prisoners; or suppressing jail riots, lynchings, escapes, or rescues in or about a detention facility falling under the care and custody of the sheriff or chief of police.

(c) Each person described in this section as a custodial officer shall, within 90 days following the date of the initial assignment to that position, satisfactorily complete the training course specified in Section 832. In addition, each person designated as a custodial officer shall, within one year following the date of the initial assignment as a custodial officer, have satisfactorily met the minimum selection and training standards prescribed by the Corrections Standards Authority pursuant to Section 6035. Persons designated as custodial officers, before the expiration of the 90-day and one-year periods described in this subdivision, who have not yet completed the required training, shall not carry or possess firearms in the performance of their prescribed duties, but may perform the duties of a custodial officer only while under the direct supervision of a peace officer, as described in Section 830.1, who has completed the training prescribed by the Commission on Peace Officer Standards and Training, or a custodial officer who has completed the training required in this section.

(d) At any time 20 or more custodial officers are on duty, there shall be at least one peace officer, as described in Section 830.1, on duty at the same time to supervise the performance of the custodial officers.

(e) This section shall not be construed to confer any authority upon any custodial officer except while on duty.

(f) A custodial officer may use reasonable force in establishing and maintaining custody of persons delivered to him or her by a law enforcement officer; may make arrests for misdemeanors and felonies within the local detention facility pursuant to a duly issued warrant; may make warrantless arrests pursuant to Section 836.5 only during the duration of his or her job; may release without further

Approved

criminal process persons arrested for intoxication; and may release misdemeanants on citation to appear in lieu of or after booking.

(g) Custodial officers employed by the Santa Clara County Department of Corrections are authorized to perform the following additional duties in the facility:

(1) Arrest a person without a warrant whenever the custodial officer has reasonable cause to believe that the person to be arrested has committed a misdemeanor or felony in the presence of the officer that is a violation of a statute or ordinance that the officer has the duty to enforce.

(2) Search property, cells, prisoners or visitors.

(3) Conduct strip or body cavity searches of prisoners pursuant to Section 4030.

(4) Conduct searches and seizures pursuant to a duly issued warrant.

(5) Segregate prisoners.

(6) Classify prisoners for the purpose of housing or participation in supervised activities.

These duties may be performed at the Santa Clara Valley Medical Center as needed and only as they directly relate to guarding inpatient, in-custody inmates. This subdivision shall not be construed to authorize the performance of any law enforcement activity involving any person other than the inmate or his or her visitors.

(h) Nothing in this section shall authorize a custodial officer to carry or possess a firearm when the officer is not on duty.

(i) It is the intent of the Legislature that this section, as it relates to Santa Clara County, enumerate specific duties of custodial officers (known as "correctional officers" in Santa Clara County) and to clarify the relationships of the correctional officers and deputy sheriffs in Santa Clara County. These duties are the same duties of the custodial officers prior to the date of enactment of Chapter 635 of the Statutes of 1999 pursuant to local rules and judicial decisions. It is further the intent of the Legislature that all issues regarding compensation for custodial officers remain subject to the collective bargaining process between the County of Santa Clara and the authorized bargaining representative for the custodial officers. However, nothing in this section shall be construed to assert that the duties of custodial officers are equivalent to the duties of deputy sheriffs nor to affect the ability of the county to negotiate pay that reflects the different duties of custodial officers and deputy sheriffs.

(j) This section shall become operative on January 1, 2003.

Approved

CPOA Sideletter - June 2, 2010

Introduction

The County Executive has presented a proposed FY 2011 budget to the Board of Supervisors. The Board has received comments, considered and discussed the various proposals of the County Executive, including those affecting both the Sheriff's Office and the Department of Correction. The Board has directed staff to meet with affected parties including the Correctional Peace Officers' Association and report back to the Public Safety and Justice Committee prior to the Budget Hearings scheduled for mid-June 2010. Such meetings have occurred between staff and the Association and the parties reached certain agreements memorialized below.

Agreement

The County of Santa Clara (County) and the Correctional Peace Officers Association (CPOA) agree as follows:

1. The County agrees to support CPOA's efforts to cause a bill to be introduced in the state legislature and to take all reasonable steps to support the passage of an amendment to add County of Santa Clara to the list of counties covered under Penal Code section 830.1(c).
2. Following the effective date of the amendment to Penal Code section 830.1 (c), Correctional Officers, Correctional Sergeants, Correctional Lieutenants and Correctional Captains will become deputies of the sheriff under Penal code section 830.1(c) so long as their duties relate to the custodial assignments with responsibilities for maintaining the operations of county custodial facilities, including the custody, care, supervision, security, movement, and transportation of inmates; and provided that an individual is not otherwise disqualified from becoming a peace officer under Penal Code 830.1 (c). Those Officers and Sergeants who do not meet the requirements for peace officer qualification will remain public officers under Penal Code 831.5
3. This agreement does not impact the Sheriff's ability to assign certain Penal Code section 830.1(c) deputies identified in 2 above to gun-bearing responsibilities while on duty. Nothing in this agreement obligates the County to mandate that the Sheriff permit the carrying of firearms off duty for 830.1(c) deputies identified in 2 above, beyond what is provided for in law.
4. The career path for a Correctional Officer, Correctional Sergeant, Correctional Lieutenant or Correctional Captain shall be maintained.
5. The number of Correctional Officer positions that are subject to deletion as recommended by the County Executive shall not be changed. The specific positions to be deleted by unit or division may be altered subject to any necessary review based on operational needs.
6. All personnel represented by CPOA adversely affected by the FY 2011 budget shall be returned to their former classes upon the availability of vacant positions.
7. Should the final adopted State budget for FY 2011 result in increased inmate population, the County will agendaize this subject along with any staffing augmentation to the Public Safety and Justice Committee and in turn to the full Board.
8. CPOA supports the County Executive's recommended budget for FY 2011 as submitted to the Board of Supervisors.

For County

Jeffrey V. Smith, County Executive

Dated: June 2, 2010

For CPOA

Everett Fitzgerald, President

Approved