

# A G E N D A



SPECIAL MEETING  
OFFICE OF INDEPENDENT REVIEW AD HOC COMMITTEE  
ORANGE COUNTY, CALIFORNIA

**Monday, October 19, 2015**  
**10:00 A.M.**

CONFERENCE ROOM A, FIFTH FLOOR  
333 W. Santa Ana Blvd., 10 Civic Center Plaza  
Santa Ana, California

**TODD SPITZER**  
CHAIRMAN  
Third District

**ANDREW DO**  
SUPERVISOR  
First District

COUNTY EXECUTIVE OFFICER  
Frank Kim

COUNTY COUNSEL  
Leon J. Page

CLERK OF THE BOARD  
Jamie Ross, Deputy

This agenda contains a brief description of each item to be considered. Except as provided by law, no action shall be taken on any item not appearing in the agenda. To speak on an item, complete a Speaker Request Form(s) identifying the item(s) and deposit it in the box next to the Clerk. Speaker request forms must be deposited prior to the reading of the individual agenda item. When addressing the Ad Hoc Committee, it is requested that you state your name for the record. Address the Committee as a whole through the Chairman. Comments to individual Supervisors or staff are not permitted. Speakers are limited to three (3) minutes per item.

*Supporting documentation is available for review in the Clerk of the Board of Supervisors office in the Hall of Administration, 333 W. Santa Ana Blvd., Room 465, Santa Ana, 92701 8:00 am - 5:00 pm, Monday-Friday.  
The Agenda is available online at: <http://ocgov.com/gov/bos/agenda>*

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In compliance with the Americans with Disabilities Act, those requiring accommodations for this meeting should notify the Clerk of the Board's Office 72 hours prior to the meeting at (714) 834-2206

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**ADMINISTRATIVE MATTERS:** (Item 1)

*At this time, members of the public may ask the Committee to be heard on the following items as those items are called.*

1. Receive and file progress report of Special Counsel Michael Gennaco and provide direction regarding the development of ordinances, polices and model for independent oversight of Orange County law enforcement agencies

**PUBLIC & COMMITTEE COMMENTS:**

**PUBLIC COMMENTS:**

*At this time members of the public may address the OIR Ad Hoc Committee on any matter not on the agenda but within the jurisdiction of the Committee. The Committee or Chairman may limit the length of time each individual may have to address the Committee.*

**COMMITTEE COMMENTS:**

**ADJOURNMENT**



**TODD SPITZER**

CHAIRMAN, BOARD OF SUPERVISORS  
SUPERVISOR, THIRD DISTRICT

ORANGE COUNTY HALL OF ADMINISTRATION  
333 W. SANTA ANA BLVD., SANTA ANA, CALIFORNIA 92701  
PHONE (714) 834-3330 FAX (714) 834-2786  
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RECEIVED  
2015 OCT -9 AM 9:41  
CLERK OF THE BOARD  
ORANGE COUNTY  
BOARD OF SUPERVISORS

**MEMORANDUM**

October 7, 2015

TO: Clerk of the Board

FROM: Supervisor Todd Spitzer, Chairman  
Supervisor Andrew Do 

SUBJECT: Special Meeting of the Board of Supervisors' Office of Independent Review Ad Hoc Committee

Please prepare and post an agenda for a special meeting of the Office of Independent Review Ad Hoc Committee. The meeting will be held on Monday, October 19, 2015, at 10:00 a.m. in the Hall of Administration, 5<sup>th</sup> Floor, Conference Room A. The agenda for the special meeting should include one (1) item of business, and should also include an opportunity for public comment. The title of one item of business should read:

**Chairman Spitzer and Supervisor Do** – Receive and file progress report of Special Counsel Michael Gennaco and provide direction regarding the development of ordinances, policies and model for independent oversight of Orange County law enforcement agencies.

A report provided by Special Counsel Michael Gennaco will be distributed prior to the meeting.

Thank you.

Cc: Members of the Board of Supervisors  
Frank Kim, CEO  
Mark Denny, COO  
Leon J. Page, County Counsel

10/19/15, Item 1  
OIR Ad Hoc

2015 OCT 16 PM 2:39  
CLERK OF THE BOARD  
ORANGE COUNTY  
BOARD OF SUPERVISORS

**OIR**  
**GROUP**  
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Playa del Rey, CA 90293  
323 821 0586  
michael.gennaco@oirgroup.com

**To: Orange County Board of Supervisors**  
**From: Michael Gennaco, Special Counsel**  
**Date: October 18, 2015**  
**cc: Chief Executive Officer**  
**County Counsel**

**Re: Progress Report of Orange County Independent Oversight Review**

Commencing August 25, 2015, I was requested by this Board to conduct a review of current oversight mechanisms in Orange County and to provide viable options designed to strengthen the model. This memorandum is intended to provide a progress report of that review including preliminary thoughts and a menu of options for this Board and its public to begin to consider. I look forward to continued dialogue with the Ad Hoc Committee, this Board, County officials, other interested stakeholders, and the public as this review proceeds.

### **Introduction**

In 2008, largely as a result of a concerning jail murder implicating conduct issues of Sheriff's Department personnel, this Board and other stakeholders considered the viability of developing independent oversight. The idea was that independent oversight would help to ensure that when an allegation of misconduct and/or a critical incident occurred involving the Sheriff's Department, an independent entity would have the ability to review internal investigations of the incident for completeness and objectivity and to weigh in on the Sheriff Department determinations on accountability and discipline. As a result, a County working group was convened to study oversight mechanisms for other Sheriff Departments in California, focusing on the only two existing sheriff oversight bodies then in existence --Los Angeles and San Diego Counties. Following that study, this Board eventually enacted a County ordinance, creating the Orange County Office of Independent Review ("OIR") and engaging an Executive Director to open the Office. Since then, the OIR has functioned as the oversight entity for the County, providing its oversight almost exclusively over the Sheriff's Department but also undertaking two discrete oversight projects regarding the County's Office of Probation.

Recently, members of this Board have expressed interest in considering ways to improve the structure and functioning of the current OIR and its oversight

responsibilities over the Sheriff's Department. Moreover, some members have also inquired regarding whether independent oversight might be developed for other County Departments. As part of that interest, this Board requested me to explore these issues and provide a menu of options for consideration in both of these areas.

### **Gathering Facts: In Person Meetings and Document Review**

In initial response to this assignment, I met with Board members or their staff to solicit input on their experiences with the current OIR and how the current structure might be improved. The next focus was on County Department heads and their representatives including the Sheriff's Department, the Probation Department, the Office of the District Attorney, the Office of the Public Defender, the Department of Social Services, the Department of Child Custody Services, and the Department of Human Relations. In addition, I met with County Counsel and the County Executive Officer. The visits allowed insight to be gained on the current experience and suggestions on ways in which current oversight mechanisms could be strengthened.

In addition, I conducted a review of the current oversight ordinance, the current contract with the OIR Executive Director and originating support documents. During the visits, Department heads volunteered relevant documents such as organization charts and descriptions of services. I appreciated and was grateful for the candor and insight supplied from each of the individuals with whom I met.

### **Civilian Law Enforcement Oversight Models**

As a result of recent national events and concern about policing, there has been an increased national dialogue regarding the role civilian oversight can play in ensuring appropriate, professional and Constitutional law enforcement. This trend was most evidenced by the President's Task Force on 21<sup>st</sup> Century Policing in which the Task Force recommended that all communities consider adopting civilian oversight as a cornerstone of modern day policing.<sup>1</sup> It is expected that the Task Force's recommendation and the dialogue that continues regarding law enforcement in America will result in increased implementation of oversight models.

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<sup>1</sup> The Task Force was co-chaired by Charles Ramsey, Commissioner, Philadelphia Police Department and Laurie Robinson, Professor, George Mason University and included Cedric L. Alexander, Deputy Chief Operating Officer for Public Safety, Dekalb County, Georgia; Jose Lopez, Lead Organizer, Make the Road New York; Tracey L. Meares, Walton Hale Hamilton Professor of Law, Yale Law School; Brittany N. Packnett, Executive Director, Teach For America, St. Louis, Missouri; Susan Lee Rahr, Executive Director, Washington State Criminal Justice Training Commission; Constance Rice, Co-Director, Advancement Project; Sean Michael Smoot, Director and Chief Counsel, Police Benevolent & Protective Association of Illinois; Bryan Stevenson, Founder and Executive Director, Equal Justice Initiative; and Roberto Villasenor, Chief of Police, Tucson Police Department.

To its credit, Orange County had already created civilian oversight for its Sheriff's Department over seven years ago with the cooperation and encouragement of newly appointed Sheriff Sandra Hutchens. In addition to serving as an impetus for oversight, the jail murder incident drew the attention and caused the initiation of a United States Department of Justice ("USDOJ") investigation. The importance of the creation of oversight was demonstrated recently when recent communications with USDOJ expressed concern about the potential elimination of oversight over the Sheriff's Department as one reason to keep open its seven year investigation into OCSD.

With regard to existing civilian oversight entities, no model is exactly the same in structure, design, and operation. However, oversight models generally break down into three basic types.

**The Citizen's Review Board Model.** Perhaps the oldest model, the citizen's review board model consists of a group of volunteer community residents selected by elected officials or managers. The citizen's review board model has the appeal of consisting of representatives of the community of which the law enforcement agency serves. While attractive in theory, the review board model has faced repeated challenges of access, credibility, and influence. Many citizen review boards do not have sufficient access to law enforcement records to be able to engage in substantive discourse about law enforcement issues. Most citizen review boards' influence is resigned to providing advice on policies and practices or assuming a limited role in recommending outcomes on high profile critical incidents such as officer-involved shootings. Because members are often selected by elected officials, some law enforcement managers have expressed concern about political bias among the selectees. Other law enforcement leaders have not considered review boards credible because of their members' lack of expertise in policing matters. The limited time available to review law enforcement issues from a volunteer review board also necessarily limits their exposure to and ability to influence a busy law enforcement agency. Many law enforcement review boards have expressed frustration about the breadth of their influence and the advisory nature of their recommendations and findings.

**The Investigative Model.** A few jurisdictions have established civilian oversight models that actually perform internal investigations of citizen complaints. These oversight models include civilians that investigate citizen complaints parallel and apart from any internal investigations conducted by the agency itself. Depending on the jurisdiction, the results and findings of the civilian investigative model are reviewed by the head of the law enforcement entity and the models vary widely to the degree that the head must accept or may reject the findings. Proponents of the investigative model advocate that because law enforcement cannot be entrusted to investigate law enforcement misconduct, using civilians to conduct such investigations ensures unbiased investigations. Detractors of the investigative model cite to the inefficiencies and increased expense of parallel investigative models, the challenges that investigative models have had in completing timely investigations (albeit often as a result of insufficient resources), and the failure of many investigative oversight models to win the trust of either the Department (because of perceived or real poor quality investigations) or its community (because of perceived "pro-police" investigations). Other detractors

opine that removing or diluting the accountability functions from the agency head results in the absconding of this critical managerial responsibility and executive ownership of accountability and discipline.

**The Auditor Model.** The auditor model generally consists of a body of oversight practitioners that are appointed by leaders of the government entity and are paid to perform law enforcement oversight functions. The auditor oversight practitioners usually have significantly more access to agency materials and internal investigations and interact more regularly with police officials. While many auditor models are limited to systemic reviews of the law enforcement agency, some are able to review individual cases. Some of the auditor oversight entities are provided the ability to review internal investigations in real time and to make recommendations on case outcomes and discipline. Proponents of the auditor model note the value provided as a result of the acumen and skill of the oversight practitioner versed in law enforcement practices, the significantly greater access usually given to the practitioner, and the ability to influence law enforcement agency decisions at both the individual case and systemic levels. Detractors from the auditor model raise concerns about the oversight practitioners becoming too close and potentially coopted by the law enforcement agency they oversee and whether auditors so closely connected to the agency are truly independent. Another potential drawback to the model is that because so much of the critical work is undertaken behind the scenes and because of the restriction California law places on disclosure of personnel matters, it is more difficult to gauge, assess, or even be aware of the impact the oversight entity is having on accountability and reform.

The County's current oversight most aligns with the auditing model. The consensus of comments from both the public and Board of Supervisors appears to seek more updated information being provided to the Board, as well as reducing the perception that the oversight entity has been co-opted by the law-enforcement entity.

### **Strengthening the County's Current Oversight Model Vis a Vis the Sheriff's Department**

Perhaps because each of the oversight models has their advantages and drawbacks, there was no call from within the County stakeholders to transition away from the auditing model of the OIR toward either a civilian review board or investigative model. That being said, there was much discussion designed to strengthen and broaden the function of oversight over the Sheriff's Department and make the County's oversight more responsive to the Board of Supervisors as well as further insulate the oversight body from the perception of cooption by the law enforcement entity. Such proposals for consideration include:

- Relocating the oversight entity to the Hall of Administration, the headquarters of County government;
- Expanding the role of the oversight entity to conduct substantive systemic public audits of Sheriff's functions ( e.g., the hiring process, background investigations, the issuance of concealed weapons permits, use of force training, firearms training, academy training, special unit selection processes, safeguarding

evidence and inmate property, over detentions and early releases, reserve deputy program);

- Expanding the role of the oversight entity and enlist the assistance of law students or other volunteers to increase the presence of independent jail monitors;
- Adopting protocols to ensure more ready availability, debriefing, access, and reporting to the Board of Supervisors such as;
  - Closed session meetings to discuss status of personnel investigations
  - Regular debriefing of systemic issues and reform projects
  - Solicitation of areas of Board interest for systemic audits and review
  - Regular meets with Board Office designates regarding significant cases and investigations
- Providing more transparency and outreach through public reporting and use of social media based on protocols to be developed.

### **Potential Expansion of Independent Oversight to Other County Departments with a Criminal Justice Component**

The same principles that support the continued existence of oversight of the Sheriff's Department could be used to make a case for oversight of other County Departments that interrelate regularly with the criminal justice system. The premise that outside review can provide the Department head a perspective and insight that is not tethered to the hierarchical structure within his or her Department is not unique to the Sheriff's Department. In fact, in Orange County the idea of independent review has already been used to apparent good effect with regard to several misconduct allegations involving employees of the County Probation Department.<sup>2</sup>

As with the current state of the Sheriff's Department, any suggestion for independent oversight should not be seen as a presumption that sufficient internal controls do not exist or are broken within the current structure of the Departments. Rather, the way of thinking should be that an oversight entity is not intended to hijack and replace or replicate those already existing internal mechanisms but can serve as an additional resource to complement those systems by providing a perspective from outside the Department for that Department head to consider.

A broader reach for oversight in the County would also have the potential to increase credibility and provide additional transparency with regard to government functions. In addition, an oversight entity that would encompass other Departmental functions would assist the Chief Executive Office and this Board as a complement to their oversight responsibilities.

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<sup>2</sup> Los Angeles County also has an auditing form of oversight over its Probation Department staffed by three full-time oversight attorneys. In part because of the role of the oversight entity, Los Angeles County was able to successfully end years of federal court supervision over its Probation Department.

Recognizing the need for adaptations to the makeup and characterization of the various Departments, the advantages of outside oversight could be exported and expanded in the following ways:

**Allegations of Employee Misconduct.** When an allegation of misconduct becomes known to the Sheriff's Department, it is reviewed and a determination is made as to how the allegation is to be investigated. From its inception and through the internal investigative process, the oversight entity dialogues with Sheriff's Department investigators and decision-makers to ensure that such investigations and accountability decisions are consistent with best practices. To the same effect, when employees of other County Departments are similarly alleged to have committed misconduct, whether it be a complaint from a judge about the conduct of a deputy public defender, an allegation that a social worker falsified visits, an allegation of excessive force against a probation officer, or an allegation that a district attorney investigator was involved in inappropriate off-duty conduct or misuse of government resources, there would be similar involvement by a non-Department oversight entity to ensure that there is a robust review and/or investigation, evidence-based investigative outcomes, and appropriate accountability.<sup>3</sup>

**Review of High Risk Incidents Involving Potential or Actual Liability.** When a Sheriff's Department incident occurs that results in potential or actual liability, an internal review is conducted to examine the individual performance of its employees and a review of current systems or practices. The oversight entity is included in that discussion to ensure that any investigation or corrective action is robust and addresses the issues uncovered. To similar effect, when other Departments have incidents that result in liability, more formal corrective actions could be required to be developed with the assistance of the County's Risk Management entities and the involvement of the oversight entity and presented to the Board for approval.

**Review of Critical Incidents.** When a critical incident occurs within the Sheriff's Department, there is an internal review to determine whether employees performed within expectations and whether there are issues of policy, training, equipment, or supervision that would reduce the likelihood of reoccurrence. The oversight entity is involved in that review and provides an outside perspective on both

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<sup>3</sup> Several Department heads raised the issue of the confidentiality of records that might make it difficult to share such information with the oversight practitioner. The establishment of an oversight practitioner with an attorney/client relationship with such Departments may well overcome some of these access concerns. Working with the juvenile court to establish access could also resolve the issue with regard to juvenile records. With regard to attorney/client privileged information between the public defenders and their clients, issues that would require such access such as individual ineffective assistance claims would not be anticipated to be within the province of oversight. Those that would come under oversight scrutiny, such as allegations from the Court of public defender misconduct or audits reviewing systemic issues within the Office of the Public Defender would not require intrusion into the attorney/client relationship between the public defenders and their clients.

individual performance and the identification of systemic issues. To the same effect, when a critical incident occurs in another Department, whether it be an escape from a juvenile facility, a dismissal of a case as a result of a discovery violation, or a child abuse incident involving a case in which there had been earlier visits by the Department of Social Services, the involvement of an oversight entity in real time would serve as an independent voice in those reviews. Such real time involvement could, as is done in the Sheriff's Department, provide feedback to ensure that sufficient facts have been collected for the decision-makers and allow for independent recommendations on case outcomes and systemic improvement.

**Review of Systemic Issues (Particularly Interdepartmental Issues).**

Perhaps the greatest value that providing authority to an oversight entity to reach across County Departmental lines would occur when a systemic issue surfaces that involves multiple County Departments. For example, the recent jail informant controversy has impacted the Offices of the Public Defender, District Attorney, and the Sheriff's Department. Both the Sheriff's Department and District Attorney have determined to rely on outside assistance. The Sheriff has enlisted the assistance of her oversight entity to be part of issue identification, systemic review, and the shaping of future internal investigations. The District Attorney has hired an outside review body to examine the issues as they impact his Department. Both Department heads recognize that there is potential value in the involvement and perspective of outside entities. For the Sheriff, that outside entity already existed; for the District Attorney, the outside entity had to be identified, created, and retained, a process that has already engendered some controversy and skepticism before the review body has even completed its work.

An overarching oversight body could also assist in providing a coordinated response when inquiry or concern arises from outside entities. For example, the recent dialogue between the United States Department of Justice and County Counsel about the jail informant controversy impacts the Sheriff's Department and the Office of the District Attorney as well as this Board. To the degree that this Board has an obligation or interest in providing a County-wide response to such inquiries, a broader oversight program would be able to provide insight into shaping such a response.

**Review of Policies/Standardization of Procedure.** An oversight body with the ability to reach across Department lines might have been able to identify some of the issues that led to the current informant controversy. In addition, an oversight entity that had the ability to weigh in on systemic reforms would ensure that the County's systemic responses were consistent with evolving best practices, better coordinated and more impactful.

**Facilitation of Interdepartmental Referrals and County Awareness.**

An oversight entity that was empowered to reach across County Departments would be the receiver of information that could be more facilely reviewed or referred to other Departments as appropriate. For example, concerns registered by Public Defenders about the conduct of employees or systems deployed by the District Attorneys or Sheriff's Department would be routed through the independent oversight practitioner for appropriate review. Similarly, potential criminal misconduct of County

Departmental employees that the oversight practitioner became aware of would be timely referred to the District Attorney for review. The wrap-around service that would be provided by an interdepartmental oversight entity would ensure that interdepartmental referrals were timely occurring and that there was improved coordination, functioning, responsiveness, and accountability in the County's criminal justice system. Moreover, with additional responsibilities and awareness of County departments, the oversight practitioner would provide broader insight for this Board on strengths and weaknesses of County services.

### **Budgetary Impact of Enhanced Oversight**

If any or all of the menu options for increased oversight within the Sheriff's Department or incorporating other County Departments are accepted, it will necessarily mean increasing current staffing of the oversight entity. Moreover, depending on the Department functions to be included in a larger multi-department entity, the skill set and experience of the individuals comprising the oversight entity would likely need to re-calibrated and enhanced.

OIR mtg - 10/19/15 - CORRESPONDENCE

To: Chairman Spitzer and Orange County Supervisors

From: Randy Johnson, OC Resident and Taxpayer



Date: October 17, 2015

Subj: Public Comment, re: OIR Ad-Hoc Meeting, 10/19/2015

CLERK OF THE BOARD  
ORANGE COUNTY  
BOARD OF SUPERVISORS

2015 OCT 19 AM 7:20

RECEIVED

I request that the Clerk of the Board make this statement part of the public record and to make every effort to submit it to the OIR Ad-Hoc committee members and Staff in advance of the OIR Ad-Hoc meeting scheduled for the morning of 10/19/2015.

I am unable to physically attend the OIR Ad-Hoc meeting on 10/19/2015 and wish to submit this short statement in lieu of my attendance. I thank Mr. Spitzer's office for notifying me about the meeting via email. And I greatly appreciated the time provided you to me to voice my recommendations at the last OIR Ad-Hoc meeting in August.

I had the opportunity to read Mr. Gennaco's progress report on the OIR, dated 10/18/2015. Also, I read an article in the OC Register, published 10/17/2015, entitled Watchdog: County ponders jailhouse snitch investigation, which made detailed reference to the upcoming meeting.

It's apparent that the County is considering a significant expansion of the scope of the OIR duties. And this would entail a significant increase in taxpayer dollars to accomplish. I don't oppose it as long as the taxpayers

get authentic oversight as opposed to phantom oversight that was forced upon us for the past seven (7) years under the current OIR model and direction of Stephen Connolly. It would be unconscionable for you to make us pay more for the same lax performance. That's my primary concern.

To guard against such an occurrence, I believe it's necessary and advantageous to add a citizen review board, made up of citizen volunteers, to review the findings or omissions of those who investigate questionable public safety behavior. Hybrid oversight models like this do exist across the Country and have been quite successful. It would not only add another layer of scrutiny to the process, but also instill more public confidence in the oversight process at a time when public confidence in police agencies is at or close to an all time low.

Again, average citizens are required, by Law, to serve as jurors on complex criminal cases. Jurors make judgment calls, based upon the evidence, that send defendants away to prison for a lifetime or even to death row. So the notion that citizens don't have the wherewithal to oversee questionable behavior by public safety officials is just not consistent with the manner in which our justice system operates. And most will agree that our justice system, while not perfect, is the best around as long as it is applied equally and impartially.

Furthermore, the civil judgment awards that arise from police misconduct cases always fall upon the citizen taxpayers. We have seen many millions of tax dollars paid for solo lawsuits in Orange County as a result of wrongful

police actions. If the ordinary citizen taxpayers are forced to pay these large sums of money then we should also have active participation in the process that reviews the actions that led to these large settlements or judgments. It's only fair.

I have personally contacted representatives from various police citizen review boards that operate in California. These include review boards in Oakland, Long Beach, Berkeley and San Diego. I also spoke to a review board representative in Tucson, Az. Some are hybrid-models. Some are solo-models. And based on public information, all have established very successful and cooperative oversight resulting in fewer adverse incidents. And there are been few, if any, problems with these citizen review boards legally obtaining investigative materials. I'm very disappointed that our Board of Supervisors have not given these citizen review boards more due consideration, as it is your responsibility to enhance public confidence in our police oversight processes. "Lay people" have proven to be quite successful in the business of police oversight, based upon the factual data.

So those are my immediate thoughts and recommendations while you work to reform the police oversight operations in Orange County. And I look forward to providing you with additional input as you move forward in this endeavor.

**Nothing Follows.**