

REVISED

A G E N D A



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

Monday, November 9, 2015
4:00 P.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 OFFICE
Mark Denny, COO

COUNTY COUNSEL
Nicole Sims, Deputy

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 Chair. 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>

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

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. Relating to the independent oversight and review of County operations, receive and file updated progress report of Special Counsel Michael Gennaco; provide direction to County Counsel and Mr. Gennaco to prepare amendments to Article 18 of Division 2 of Title 1 of the Codified ordinances of the County of Orange pertaining to the Office of Independent Review (OIR) that (1) amend the jurisdiction of the OIR to additionally include oversight and review of the Probation Department, Office of the District Attorney, Office of the Public Defender, and the Social Services Agency, and (2) enhance the reporting obligations of the OIR to the Board of Supervisors

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



COUNTY OF ORANGE
BOARD OF SUPERVISORS

ROBERT E. THOMAS HALL OF ADMINISTRATION
10 CIVIC CENTER PLAZA
P. O. BOX 687
SANTA ANA, CA 92702-0687

2015 NOV -3 PM 4:16

ORANGE COUNTY
BOARD OF SUPERVISORS

MEMORANDUM

November 3, 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 a notice, agenda, and call for a special meeting of the Office of Independent Review Ad Hoc Committee. The meeting will be held on Monday, November 9, from 4:00 p.m. to 5:30 p.m., in the Hall of Administration, 5th 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 the one item of business should read:

Chairman Spitzer and Supervisor Do – Relating to the independent oversight and review of County operations, receive and file updated progress report of Special Counsel Michael Gennaco; provide direction to County Counsel and Mr. Gennaco to prepare amendments to Article 18 of Division 2 of Title 1 of the Codified Ordinances of the County of Orange pertaining to the Office of Independent Review (OIR) that (1) amend the jurisdiction of the OIR to additionally include oversight and review of the Probation Department, Office of the District Attorney, Office of the Public Defender, and the Social Services Agency, and (2) enhance the reporting obligations of the OIR to the Board of Supervisors.

Please include the following document as an attachment to this item of business:

- Report of Special Counsel Michael Gennaco

Thank you.

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



TODD SPITZER
SUPERVISOR, THIRD DISTRICT

ORANGE COUNTY BOARD OF SUPERVISORS
ORANGE COUNTY HALL OF ADMINISTRATION
333 W. SANTA ANA BLVD., SANTA ANA, CALIFORNIA 92701
PHONE (714) 834-3330 FAX (714) 834-2786
Todd.Spitzer@ocgov.com

11-9-15 OIR
ad hoc #1

2015 NOV -6 AM 10:11
ORANGE COUNTY
BOARD OF SUPERVISORS

MEMORANDUM

November 6, 2015

TO: Clerk of the Board

FROM: Chairman Todd Spitzer *TS*
Supervisor Andrew Do

SUBJECT: Revision to the Report of Special Counsel Michael Gennaco

Thank you.

Attachments [1]

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

11-9-15 OIR
ad hoc, #1

OIR
GROUP
7142 Trask Avenue
Playa del Rey, CA 90293
323 821 0586
michael.gennaco@oirgroup.com

2015 NOV -6 AM 10:13
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

To: Orange County Board of Supervisors
From: Michael Gennaco, Special Counsel
Date: November 3, 2015
cc: Chief Executive Officer
County Counsel

Re: Report of Orange County Independent Oversight Review

Procedural History

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. On October 16, 2015, I submitted a progress report to this Board identifying preliminary issues. On October 19, 2015, the Ad Hoc Committee convened a public meeting in which the progress report was discussed and input was solicited from meeting attendees. This memorandum is intended to provide an updated report of the oversight review project. On November 9, 2015, the Ad Hoc meeting will convene a second public meeting to solicit input from meeting attendees regarding oversight and solicit any questions or comments regarding the updated report. On November 10, 2015, I will appear before this Board to respond to any questions prompted by this report and to take any further Board direction with regard to the County oversight review assignment.

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 several 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 appropriate for other County Departments. As part of that interest, this Board requested me to explore these issues and identify 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, descriptions of services, and audit reports. I appreciated and was grateful for the candor and insight supplied by 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 21st Century Policing in which the Task Force recommended that all communities consider adopting civilian oversight as a cornerstone of modern day policing.¹ It is expected that the Task Force's

¹ 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

recommendation and the dialogue that continues regarding law enforcement in America will result in increased implementation of civilian oversight.

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 in Orange County, the jail murder incident drew the attention and caused the initiation of a United States Department of Justice ("USDOJ") investigation. The importance of the County's 2008 creation of oversight was demonstrated recently when communications from USDOJ expressed concern about the potential elimination of oversight over the Sheriff's Department as one reason to keep open its seven year investigation.

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. Moreover, often citizen review boards' influence is limited to providing advice on policies and practices or assuming a collateral 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 potential 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 consist of professionals that investigate citizen complaints parallel and apart from any internal investigations conducted by the agency itself. The recommended results and findings of the civilian investigative oversight entity are reviewed by the head of the law enforcement entity and there is wide variance among jurisdictions about the degree to which the law enforcement head may accept or reject

Benevolent & Protective Association of Illinois; Bryan Stevenson, Founder and Executive Director, Equal Justice Initiative; and Roberto Villasenor, Chief of Police, Tucson Police Department.

the findings. Proponents of the investigative model advocate that because law enforcement cannot be entrusted to fairly 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 internal investigative functions from the agency head results in the potential for that leadership to surrender the critical managerial responsibilities 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 County’s current OIR most closely aligns as an auditor model. The auditor oversight practitioners usually have significantly more access to agency materials and internal investigations and interact more regularly with law enforcement officials. While many auditor models are limited to systemic reviews of the law enforcement agency, some are authorized 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 auditor practitioner, and the increased ability to influence law enforcement agency decisions at both the individual case and systemic levels. Detractors from the auditor model raise concerns about whether auditors so closely immersed in agency functions and decisions are truly independent. Another potential drawback to the model is that because so much of the critical work is undertaken behind the scenes, is granular and necessarily confidential, and because of the restriction California law places on disclosure of personnel matters, it is more difficult to gauge, assess, or be completely aware of the impact the oversight entity has on accountability and reform.

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 by 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 any perception of cooption by the law enforcement entity. The proposals advanced that should be considered by this Board 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 to allow for the increased presence of independent jail monitors;
- Adopting protocols to ensure more ready availability, debriefing, access, and reporting to the Board of Supervisors such as:
 - 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 Inclusion of Independent Oversight to Other County Departments that Have Criminal Justice Responsibilities

The same principles that support the continued existence of oversight of the Sheriff's Department could be used to make a case for independent oversight of other County Departments that interrelate regularly with the criminal justice system, including the Probation Department, the Office of the Public Defender, the Office of the District Attorney, the Department of Social Services, and the Department of Child Custody Services. The premise that outside review can provide the Department head and this Board a perspective and insight that is not tethered to the hierarchical structure within County Departments is not unique to the Sheriff's Department. In fact, in Orange County the concept of independent review has already been used to apparent good effect with regard to several misconduct allegations involving employees of the County Probation Department.²

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 County 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 and this Board to consider.

² 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 eventually able to successfully end years of federal court supervision over its Probation Department.

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 this Board and the Chief Executive Office as a complement to their County oversight responsibilities.

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.³

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 this 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,

³ In the federal system, the Office of Professional Responsibility (OPR) and the Office of the Inspector General (OIG) are independent offices that report directly to the United States Attorney General and investigate allegations of misconduct involving government attorneys. While a broader Orange County OIR would incorporate the general concept of independent oversight over attorneys evidenced by the OPR and OIG, the OIR model would not conduct internal investigations but would, as it currently does with the Sheriff's Department, timely review such investigations for thoroughness and objectivity.

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 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 would 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 readily 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 by 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.

Potential Legal Challenges to County Oversight

Several Department heads raised the issue of the confidentiality of records as set out in various state statutes that could make it difficult to share such information with the oversight practitioner. For example, the State of California Welfare and Institutions Code Section 827 provides limits on the access of juvenile records. To the degree that the oversight entity was involved in overseeing the Probation Department, the Social Services Department or the Department of Child Custody Services, access to such records would be critical.

Much like OIR was able from its origin to access confidential records in the Sheriff's Department, including personnel records protected by 832.7 of the Penal Code, the establishment of an oversight practitioner with an attorney/client relationship with impacted Departments similar to the relationship shared by County Counsel should facily overcome those access concerns.⁴

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 the proposed 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 individual clients.

The Association of Orange County Deputy Sheriffs has raised the issue of whether any changes to the oversight function with regard to the Sheriff's Department and the Office of the District Attorney would be necessarily subject to discussions between the County and the Association prior to implementation. Consultation with County Counsel regarding the issues raised by the Association is recommended because those issues are beyond the scope of this memorandum.

⁴ In fact, in order to complete some of its past Probation Department assignments, OIR has successfully petitioned the Court for access to juvenile records.

The Current Oversight Ordinance

As noted above, in 2008, the Board of Supervisors enacted an ordinance initiating independent oversight of the Sheriff's Department. That ordinance established the Office of Independent Review and set out the OIR's responsibilities. If this Board decides that the OIR should be reconfigured to be more responsive to this Board's concerns and that its oversight over the Sheriff's Department should be broadened and strengthened, the current ordinance would require revision in order to set out OIR's increased responsibilities. Similarly, an ordinance revision would be needed in order to include other County Departments with criminal justice responsibilities within the oversight functions of OIR.

Budgetary Impact of Enhanced Oversight

If any or all of the 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.